

UNITED STATES CIRCUIT COURT OF APPEALS,

FOR THE NINTH CIRCUIT.

NORTHERN PACIFIC RAIL-
ROAD COMPANY,

Plaintiff in Error,


vs.

FRANK PAUSON,

Defendant in Error.

TRANSCRIPT OF RECORD.

*In Error to the United States Circuit Court, Northern District
of California.*



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In the Superior Court of the City and County of San Francisco, State of California.

FRANK PAUSON,

Plaintiff,

vs.

NORTHERN PACIFIC RAILROAD COM-
PANY,

Defendant.

Complaint.

Plaintiff above named complains of defendant above named, and for cause of action alleges:

I.

The plaintiff is, and at all the times herein mentioned, was a resident and citizen of the City and County of San Francisco, State of California.

II.

The defendant is, and during all the times herein mentioned, was a corporation formed under an Act of the Congress of the United States, entitled "An Act granting lands to aid in the construction of a Railroad and Telegraph Line from Lake Superior to Puget Sound, on the Pacific Coast, by the northern route," approved July 2nd, 1864, and having its principal office and place of business at the City of Saint Paul, in the State of Minnesota, and having a branch office and managing or business agent at the City and County of San Francisco, State of California.

III.

Defendant was at all the times mentioned in this complaint the owner of, and engaged in operating a line of railroad from the City of Seattle, in the State of Washington, to the City of Portland, in the State of Oregon, and was the owner of the cars and rolling stock used in the operation of said railroad and was a common carrier of passengers and freight thereon.

IV.

On the 6th day of September, 1892, the plaintiff became, and was a passenger upon a train operated upon the railroad of the defendant, and running from the said City of Seattle to the said City of Portland for the purpose of being transported by it from the said City of Seattle to the said City of Portland, and has paid to the defendant the fare for such transportation.

V.

That while plaintiff was as aforesaid a passenger upon the said train of the defendant, the defendant wrongfully, maliciously, wantonly, and willfully assaulted, insulted, and maltreated the plaintiff, and by force and arms ejected him from the said train.

VI.

That by reason of the said acts of the defendant the plaintiff suffered both physical and mental injuries.

VII.

That by reason of the said acts of the defendant and the said injuries so suffered by the plaintiff as aforesaid, plaintiff has been damaged in the sum of ten thousand (\$10,000) dollars.

Wherefore plaintiff prays judgment against defendant for the sum of ten thousand (\$10,000) dollars and costs of suit.

(Signed.)

GEORGE LEZINSKY,
Attorney for Plaintiff.

STATE OF CALIFORNIA, }
City and County of San Francisco. } ss.

Frank Pauson, being first duly sworn, deposes and says: that he is the plaintiff mentioned in the foregoing complaint, that he has read the said complaint and well knows the contents thereof.

That the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters he believes it to be true.

FRANK PAUSON.

Subscribed and sworn to before me this 15th day of March, 1893.

(Seal.)

LEE D. CRAIG,
Notary Public, in and for the City and County
of San Francisco.

[Endorsed]: Filed April 5, 1893. M. C. Haley,
Clerk. By W. J. Heney, Deputy Clerk.

In the Superior Court, City and County of San Francisco, State of California.

Department No.

FRANK PAUSON,

Plaintiff,

vs.

NORTHERN PACIFIC RAILROAD COM-
PANY (a Corporation),

Defendant.

Action brought in the Superior Court, City and County of San Francisco, State of California, and the Complaint filed in said City and County of San Francisco, in the office of the Clerk of said Superior Court.

Summons.

The People of the State of California, send greeting to Northern Pacific Railroad Company, (a Corporation), Defendant:

You are hereby required to appear in an action brought against you by the above-named plaintiff in the Superior Court, City and County of San Francisco, State of California, and to answer the complaint filed therein within ten days (exclusive of the day of service) after the service on you of this summons, if served within this county, or, if served elsewhere, within thirty days.

The said action is brought to recover judgment against you for the sum of ten thousand dollars damages sustained by plaintiff on account of being wrongfully expelled by you from a railroad train owned and

operated by you between Seattle in the State of Washington, and Portland in the State of Oregon, on September 6th, 1892, all of which is more particularly set forth in the complaint on file herein to which your attention is particularly directed.

And you are hereby notified that if you fail to appear and answer the said complaint as above required, the said plaintiff will apply to the Court for the relief demanded in this complaint.

Given under my hand and seal of the said Superior Court, in the City and County of San Francisco, State of California, this 5th day of April, in the year of our Lord one thousand eight hundred and ninety-three.

(Seal.)

M. C. HALEY, Clerk,

By W. J. Heney, Deputy Clerk.

STATE OF CALIFORNIA, }
 City and County of San Francisco. } ss.

William A. Johnson, being first duly sworn deposes and says, that he is and was at all the times herein mentioned, a citizen of the United States, over the age of eighteen years, a resident of the City and County of San Francisco, and not interested in the within entitled action, and competent to be a witness upon the trial thereof. That on the 5th day of April, 1893, he personally served a copy of the within summons upon the defendant therein named, to-wit: Northern Pacific Railroad Company, a foreign corporation, doing business within this State, and having a business agent within the State, by delivering personally to and leaving with T. K. Stateler, such business agent of said corporation, at the said City and County of

San Francisco, in said State of California, the said copy of said summons together with a copy of the complaint in said action.

Subscribed and sworn to before me this 5th day of April, 1893.

W. A. JOHNSON.

(Seal.)

LEE D. CRAIG,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed April 13th, 1893. M. C. Haley, Clerk. By J. M. Sullivan, Deputy Clerk.

In the Superior Court of the City and County of San Francisco, State of California.

DEPARTMENT NO. 5.

FRANK PAUSON,

Plaintiff,

vs.

NORTHERN PACIFIC RAILROAD COMPANY,

Defendant.

No. 40,530.

Motion to Set Aside Service of Summons.

Now comes the defendant in the above-entitled action appearing specially herein by its attorney, Joseph D. Redding, and for the sole and only purpose of moving to set aside and dismiss the service of the summons heretofore made in this action in the City and County of San Francisco, State of California, on T. K. Stateler, the ticket agent of said defendant in this State, on the ground that such service is invalid, as hereinafter set forth and not appearing otherwise,

and not intending to submit itself by this special appearance to the jurisdiction of this Court in this action, but expressly reserving any and all other rights it may have herein in that behalf, and *moves* to set aside and dismiss the service of the summons herein and heretofore made on said T. K. Stateler in this action on the 5th day of April, 1893, at the City and County of San Francisco, State of California, on the grounds:

First—That the said T. K. Stateler is not the managing agent or the business agent or the cashier or the Secretary or the President of said corporation defendant within this State.

Second—Nor has the said Stateler ever been designated by said corporation defendant as a person or persons upon whom said service may be made in this State.

Third—That said defendant is a corporation foreign to this State and formed and created under the laws of the United States and under a particular Statute, namely, the Act of Congress entitled, "An Act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget Sound, on the Pacific Coast, by the northern route," approved July 2, 1864, and amendments thereto; that said corporation defendant has no principal office or principal place of business in the said State of California, and that said corporation has one principal place of business and principal office, to-wit: St. Paul, Minnesota, where its President can be found and which said principal place of business is recognized by the Statutes of the United States and especially identified as its principal place of business.

Fourth—That the cause of action, if any, sought to be tried herein, arose without the territorial jurisdiction of this Court.

Fifth—That the jurisdiction of this action is founded upon a cause other than the citizenship of the parties hereto in different States, to-wit, upon a suit arising under the constitution and laws of the United States and that the defendant is not an inhabitant of this district or of the territory of this Court; that under the Act creating this corporation, defendant, and the acts amendatory thereto, it is specially declared and exacted that this corporation, defendant, shall be sued in certain courts therein specified and not including the honorable, the said court in which these proceedings are now pending.

That said defendant is not legally brought into court by such service nor bound to move, plead answer, demur or appear herein (other than by this special appearance), by reason of such service of summons as aforesaid, inasmuch as said service of summons on T. K. Stateler, before mentioned, is invalid, illegal and of no force or effect whatsoever as regards this defendant, in not having been made upon the person or persons not at the place where required or authorized or contemplated by law, in such cases made and provided.

That there is filed and served herewith and made and intended to be made a part hereof, a notice of motion with time and place thereof, to set aside and dismiss said service of summons, together with the affidavit of T. K. Stateler in that behalf, which is also made a part hereof.

Wherefore, said defendant prays that the service of the summons in this action heretofore made upon said T. K. Stateler herein, as aforesaid, may be set aside and dismissed.

(Signed.)

JOSEPH D. REDDING,
Attorney for Defendant.

In the Superior Court of the City and County of San Francisco, State of California.

FRANK PAUSON,

Plaintiff,

vs.

NORTHERN PACIFIC RAILROAD COMPANY,

Defendant.

No. 40,530.

Affidavit of T. K. Stateler.

STATE OF CALIFORNIA, }
City and County of San Francisco. } ss.

T. K. Stateler, being first duly sworn, deposes and says: I reside in the City and County of San Francisco, State of California, and am a citizen of the United States, and over 21 years of age; that the service of the summons in this action was made on me in said City and County of San Francisco on the 5th day of April, 1893; that I am, and was at all the times herein mentioned, the General Agent of the Passenger Department of the Northern Pacific Railroad Company, the defendant corporation in the above-entitled action, in the State of California, and

that I have not now, and never have had, any control or jurisdiction whatsoever, over the general business of said corporation defendant within this State or elsewhere, except in said passenger department, and that I am not the managing agent, or the business agent, or the cashier, or the secretary, or the president of said defendant within this State or elsewhere, or in any portion in said corporation, save and except the general agent of the passenger department of said defendant in this State, and that my agency for said defendant and business relations thereto and therewith, are expressly limited to, and are confined and restricted to the passenger department of said defendant in the State of California, and that I am not the general manager, or business agent, or cashier, or secretary, or president of said defendant in the State of California, or elsewhere;

That this affiant has not, and never has had any control, charge, conduct or management of the business or managing agency, cashier's department or the secretary's department.

That the corporation defendant has no line of road in this State.

That this affiant is simply engaged in the business of selling tickets to be hereafter used by the purchasers thereof upon the lines of road of the corporation defendant in other States.

That said defendant is a corporation foreign to the said State of California and formed under the laws and Statutes of the United States and Acts of Congress, and having a principal place of business and office, to-wit: at St. Paul, Minnesota, at which place the

officers of the corporation defendant can be found and at which place are the managing and business agency and department and also the cashier and secretary of said corporation defendant.

T. K. STATELER.

Subscribed and sworn to before me, this 8th day of April, A. D. 1893.

(Seal.)

HENRY M. MCGILL,

Notary Public, in and for the City and County of San Francisco, State of California.

In the Superior Court of the City and County of San Francisco, State of California.

FRANK PAUSON,

Plaintiff,

vs.

NORTHERN PACIFIC RAILROAD COMPANY,

Defendant.

No. 40,530.

Notice of Motion.

To George W. Lezinsky, Attorney for Plaintiff:

Will you please take notice that the defendant appears specially herein by Joseph D. Redding, its attorney, for the special, sole and only purpose of moving said court to set aside and dismiss the service of the summons heretofore, and on the 5th day of April, 1893, made herein, in the City and County of San Francisco, State of California, upon T. K. Stateler, Ticket Agent of said defendant, in said State, and not appearing herein

otherwise, nor for any other purpose, and not intending to submit itself herein by such appearance to the jurisdiction of this court in this action, but expressly reserving any and all rights it may have herein in that behalf.

And you will further take notice that I will move said court, on the 14th day of April, 1893, at the opening of said court, on that day, or as soon thereafter as counsel can be heard, at the courtroom in said court, in the City and County of San Francisco, State of California, for an order setting aside and dismissing the service of said summons herein on said T. K. Stateler, as aforesaid.

Said motion will be made upon the following grounds:

First—That the said T. K. Stateler is not the managing agent, or the business agent, or the cashier, or the secretary, or the president of said corporation defendant within this State.

Second—Nor has the said Stateler ever been designated by said corporation defendant as a person or persons upon whom said service may be made in this State.

Third—That said defendant is a corporation foreign to this State, and formed and created under the laws of the United States, and under a particular statute, namely, the Act of Congress entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget Sound, on the Pacific Coast, by the northern route," approved July 2, 1864, and amendments thereto; that said corporation defendant has

no principal office or principal place of business in the said State of California, and that said corporation has one principal place of business and principal office, to-wit: St. Paul, Minnesota, where its president can be found, and which said principal place of business is recognized by the Statutes of the United States, and specially identified as its principal place of business.

Fourth—That the cause of action, if any, sought to be tried herein, arose without the territorial jurisdiction of this court.

Fifth—That the jurisdiction of this action is founded upon a cause other than the citizenship of the parties hereto in different States, to-wit: upon a suit arising under the Constitution and Laws of the United States, and that the defendant is not an inhabitant of this district or of the territory of this court; that under the Act creating this corporation defendant, and the acts amendatory thereto, it is specially declared and enacted that this corporation defendant shall be sued in certain courts therein specified, and not including the honorable, the said court in which these proceedings are now pending.

That said defendant is not legally brought into court by such service, nor bound to move, plead, answer, demur or appear herein (other than by this special appearance) by reason of such service of summons as aforesaid, inasmuch as said service of summons on T. K. Stateler, before mentioned, is invalid, illegal and of no force or effect whatsoever as regards this defendant in not having been made upon the person or persons, nor at the place where required or

authorized or contemplated by law, in such cases made and provided.

That there is filed and served herewith and made and intended to be made a part hereof, a notice of motion with time and place thereof, to set aside and dismiss said service of summons, together with the affidavit of T. K. Stateler in that behalf, which is also made a part hereof.

And said motion will be based upon the complaint and summons, and the return thereof and thereon, and all papers and records in said case and upon the affidavit of said T. K. Stateley, a copy of which is hereto attached and served herewith and made and intended to be made a part hereof.

April 7, 1893.

Yours most respectfully,

JOSEPH D. REDDING,

Attorney for Defendant.

In the Superior Court of the City and County of San Francisco, State of California.

HENRY PAUSON,

Plaintiff,

vs.

NORTHERN PACIFIC RAILROAD COMPANY,

Defendant.

No. 40,530.

Order Staying Proceedings.

Upon reading and filing the affidavit of T. K. Stateler, ticket agent of the defendant corporation, in

the State of California, together with notice of special appearance of Joseph D. Redding, and motion thereunder to set aside and dismiss the service of the summons in the above-entitled action on the said T. K. Stateler, which said action is noted for hearing before this Court for the 14th day of April, 1893, and good cause appearing therefor,

It is hereby ordered, that the said defendant have to and until the time of the determination of said motion and ten days thereafter, in which to plead in said action, and that all proceedings be stayed in said action to, and including said determination by this court of said motion to set aside and dismiss said service of said summons herein, and that the time for hearing said motion be shortened, and the same heard on the 14th inst., a copy of these papers served to-day.

JOHN HUNT,
Judge of the Superior Court.

Dated April 10th, 1893.

[Endorsed]: Filed April 10th, 1893. M. C. Haley,
Clerk. By J. M. Sullivan, Deputy Clerk.

*In the Superior Court of the City and County of San
Francisco, State of California.*

DEPT. No. 5.

FRANK PAUSON,

Plaintiff,

vs.

NORTHERN PACIFIC RAILROAD COM-
PANY,

Defendant.

} No. 40,530.

Stipulation Extending Time to File Briefs.

It is hereby stipulated that the five days and five days allotted by the Court in which the plaintiff and defendant may file briefs on the motion to set aside the service of summons shall commence to run after the taking of testimony in open court, of Mr. Stateler, providing the Court, after taking such testimony, desires the same.

GEO. LEZINSKY,

Attorney for Plaintiff.

JOSEPH D. REDDING,

Attorney for Defendant.

[Endorsed]: Filed April 20th, 1893. M. C. Haley,
Clerk. By J. M. Sullivan, Deputy Clerk.

In the Superior Court of the City and County of San Francisco, State of California.

DEPT. NO. 5.

FRANK PAUSON,

Plaintiff,

vs.

NORTHERN PACIFIC RAILROAD COMPANY,

Defendant.

No. 40,530.

Petition to Remove Cause to the Circuit Court of the United States.

To the Honorable, the Superior Court of the City and County of San Francisco, State of California:

Your petitioner, the Northern Pacific Railroad Company, respectfully shows:

1. That it is the sole defendant in the above-entitled action now pending in this court.

2. That said action was brought on the 5th day of April, 1893; that the summons in said action was served upon T. K. Stateler, an employee of the defendant, on the 5th day of April, 1893, at the City and County of San Francisco, State of California; and that the time to answer or plead has not expired, nor has the time to answer or plead expired, and said time will not expire until ten days from and after Friday, May 19th, 1893, and the said case has not yet been tried.

3. That said action is a suit at law of a civil nature, and that the matter in dispute exceeds, exclusive of interest and costs, the sum of two thousand (\$2000) dollars; that said action has been brought by the

plaintiff to recover from the defendant the sum of ten thousand (\$10,000) dollars damages, alleged to have been sustained by plaintiff by reason of having been wrongfully, maliciously, wantonly and wilfully assaulted, insulted and maltreated by the defendant, and by being ejected from the train of the defendant by force and arms on or about the 6th day of September, and while the plaintiff was a passenger upon the train of the defendant running from the City of Seattle to the City of Portland, all of which will more fully appear by reference to the complaint filed in said action by the said plaintiff.

4. That said plaintiff is a resident and citizen of the State of California, and of the Northern District thereof.

5. That your petitioner, the defendant in said action, now is and at the date of the commencement of said action, and at all the times mentioned herein was a corporation, organized and existing under the laws of the United States of America, to-wit: that certain Act of Congress, approved July 2, 1864, entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget Sound on the Pacific Coast by the northern route," and the several subsequent Acts and joint resolutions of Congress relating to the same subject matter.

6. That by reason of the premises, your petitioner is entitled under the Act of Congress in such cases made and provided to remove the said suit into the Circuit Court of the United States, for the Ninth Circuit, Northern District of California, for the proceed-

ings therein; and to that end herewith tenders to this Court proper and sufficient sureties for the doing by it of the several things required by the said Acts to be done upon the removal of a cause into a United States Circuit Court.

7. That your petitioner has made and filed with this petition a bond in the penal sum of five hundred (\$500) dollars, with good and sufficient sureties, conditioned that your petitioner shall enter into the Circuit Court of the United States, to be held in the Northern District of California, in the Ninth Circuit, on the first day of its next session, a copy of the record in said suit, and shall pay all costs that may be awarded by the said Circuit Court, and if said Court shall hold that said suit was wrongfully or improperly removed thereto; and also shall appear in said Circuit court and enter a special bail in said suit, if special bail was originally requisite therein, and shall do all such other and further appropriate acts as by the Act of Congress, approved March 5, 1889, and entitled "An Act to amend an Act of Congress, approved March 3, 1875, entitled 'An Act to determine the jurisdiction of Circuit Courts of the United States, and to regulate the removal of causes from State courts, and for other purposes,' and to further regulate the jurisdiction of Circuit Courts of the United States, and for other purposes," are requisite to be done upon removal of a suit from a State court to a Circuit Court of the United States.

And your petitioner is ready and willing to give such other and further bonds and to do all such other acts as may be lawfully required under the Acts of

Congress creating it, as above set forth or under any or all of the Acts of Congress with reference to the removal of causes.

Your petitioner therefore prays that this Honorable Court will accept this petition and said bond and proceed no further in said suit and that said suit may be removed to the Circuit Court of the United States in and for the Northern District of California in the Ninth Circuit, as provided by the statutes of the United States hereinbefore referred to and your petitioner will ever pray.

JOSEPH D. REDDING,

Attorney for Petitioner.

The foregoing petition is hereby accepted and granted and the said action wherein Frank Pauson is plaintiff and the Northern Pacific Railroad Company is defendant, No. 40,530, is hereby removed to the Circuit Court of the United States in and for the Northern District of California, in the Ninth Circuit, as provided by the statutes of the United States.

Dated May, 1893.

.....,
 Judge of the Superior Court, City and County
 of San Francisco, State of California.

[Endorsed]: Filed May 25, 1893. M. C. Haley,
 Clerk. By J. D. Ruggles, Deputy Clerk.

In the Superior Court of the City and County of San Francisco, State of California.

DEPT. No. 5.

FRANK PAUSON,

Plaintiff,

vs.

NORTHERN PACIFIC RAILROAD COMPANY.

No. 49,530.

Bond on Removal.

Know All Men By These Presents: That we, the Northern Pacific Railroad Company, as principal, and J. W. Hartley and Joseph D. Redding, as sureties, are held and firmly bound unto Frank Pauson, plaintiff in the above-entitled action in the sum of five hundred dollars, for the payment of which, well and truly to be made, we bind ourselves, and our and each of our successors, heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this 25th day of May, 1893.

Whereas, the above-entitled action was brought on the 5th day of April, 1893, in the Superior Court, City and County of San Francisco, State of California, by said Frank Pauson against said Northern Pacific Railroad Company; and

Whereas, said action is removable into the Circuit Court of the United States in and for the Northern District of California, in the Ninth Circuit, under and by virtue of the Act of Congress, approved July 2, 1864, entitled "An Act

granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget Sound on the Pacific Coast, by the northern route," and also under and by virtue of that certain Act of Congress, approved March 3, 1867, entitled "An Act to amend the Act of Congress, approved March 3, 1875, entitled 'An Act to determine the jurisdiction of Circuit Courts of the United States, and to regulate the removal of causes from State Courts and other purposes,' and to further regulate the jurisdiction of Circuit Courts of the United States and for other purposes," and under and by virtue of all of the Acts of Congress in reference to the removal of causes, and

Whereas, said Northern Pacific Railroad Company, has made and is about to file herewith, its petition in said suit, in said Superior Court, in and for the City and County of San Francisco, State of California, for the removal of said suit to said Circuit Court of the United States, in and for the said Northern District of California, in the Ninth Circuit.

Now, therefore, the condition of this obligation is such that if said Northern Pacific Railroad Company shall enter in such Circuit Court of the United States, on the first day of its next session, a copy of the record in said cause, and shall pay all costs that may be awarded by the said Circuit Court, if said court shall hold that said cause was wrongfully or improperly removed thereto, and shall also there appear and enter special bail in said cause, if special bail was originally requisite therein, and shall do all such other appropriate acts, as by said Acts of Congress are required to be done upon the removal of a suit from

a State Court to a Circuit Court of the United States, then this obligation shall be void, otherwise, it shall remain in full force and virtue.

NORTHERN PACIFIC RAILROAD COMPANY,
 By T. K. Stateler, General Agent P. Dept.
 And JAMES W. HARTLEY, (Seal.)
 JOSEPH D. REDDING, (Seal.)

STATE OF CALIFORNIA, }
 City and County of San Francisco. } ss.

J. W. Hartley and Joseph D. Redding, the sureties in the foregoing obligation, being each duly sworn, each for himself, says: that he is a resident of the State of California and the Northern District thereof, and a freeholder therein, and is worth the sum of five hundred dollars, over and above all his just debts and liabilities, exclusive of property exempt by law from execution.

JOSEPH D. REDDING.

JAMES W. HARTLEY.

Subscribed and sworn to before me, this 25th day of May, A. D. 1893.

(Seal.)

JOHN J. DEAN,

Notary Public, in and for the City and County of San Francisco, State of California.

The above bond is hereby approved.

CHARLES W. SLACK,

Judge of Superior Court, City and County of San Francisco, State of California.

Dated May 25th, 1893.

[Endorsed]: Filed May 25th, 1893. M. C. Haley, Clerk. By J. D. Ruggles, Deputy Clerk.

OFFICE OF THE COUNTY CLERK,

of the City and County of San Francisco.

I, M. C. Haley, County Clerk of the City and County of San Francisco, State of California, and *Ex-officio* Clerk of the Superior Court thereof, do hereby certify the foregoing to be a full, true, and correct copy of the whole of the record in the foregoing entitled cause of Frank Pauson vs. Northern Pacific Railroad Company, No. 40,530, on file in my office on the twenty-seventh day of May A. D., 1893.

Witness my hand, and the seal of said court, this 27th day of May A. D., 1893.

(Seal.)

M. C. HALEY, Clerk.

By J. D. Ruggles, Deputy Clerk.

[Endorsed]: No. 11,807. U. S. Circuit Court, Northern Dist. of Cal. Frank Pauson vs. Northern Pacific R. R. Co. Transferred Record. Filed May 27, 1893. L. S. B. Sawyer, Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
Northern District of California.*

FRANK PAUSON,

Plaintiff,

vs.

NORTHERN PACIFIC RAILROAD COM-
PANY,

Defendant.

No. 11,807.

Demurrer.

Now comes the defendant in the above-entitled action and demurs to the complaint of the plaintiff on file herein and for cause of demurrer states.

1. That the Court has no jurisdiction of the person of the defendant, or the subject of the action.
2. That the complaint does not state facts sufficient to constitute a cause of action.

Wherefore, defendant prays judgment that the plaintiff take nothing by this action and that the defendant be hence dismissed with its costs.

JOSEPH D. REDDING,
Attorney for Defendant.

I certify that the demurrer, in my opinion, is well founded in point of law.

JOSEPH D. REDDING,
Atty. for Deft.

[Endorsed]: Service of the within and receipt of a copy thereof is hereby admitted, this 27 day of May, 1893. Geo. Lezinsky, Attorney for Plaintiff. Filed May 29. L. S. B. Sawyer, Clerk. By W. B. Beazley, Deputy Clerk.

UNITED STATES OF AMERICA.

*Circuit Court of the United States, Ninth Judicial Circuit,
Northern District of California.*

FRANK PAUSON,

vs.

NORTHERN PACIFIC RAILROAD Co.

No. 11,807.

Order Overruling Demurrer.

On motion of Joseph D. Redding, Esq., counsel for defendant, it is ordered that the demurrer to the complaint herein be, and the same hereby is overruled, with leave to said defendant to answer in fifteen days.

Entered June 5, 1893.

*In the Circuit Court of the United States, Ninth Circuit,
Northern District of California.*

FRANK PAUSON,

Plaintiff,

vs.

NORTHERN PACIFIC RAILROAD COM-
PANY,

Defendant.

No. 11,807.

Answer.

Now comes the defendant in the above-entitled action, by its attorney, Joseph D. Redding, and makes answer unto the complaint of the plaintiff on file herein, and for answer states:

I.

The plaintiff has no information as to the truth of the first paragraph of plaintiff's complaint, and therefore denies that plaintiff is or at all the times herein mentioned was a resident or a citizen of the City and County of San Francisco, or of the State of California.

II.

Answering Paragraph IV of the plaintiff's complaint, the defendant denies that on the 6th day of September, 1892, or upon any date or at all, plaintiff became or was a passenger upon a train operated upon the railroad of the defendant or running from the City of Seattle to the said City of Portland for the purpose of being transported by it from the said City of Seattle to said City of Portland, or has paid to the defendant the fare for such transportation; denies that

the plaintiff at any time or in any manner became, or was a passenger upon any train of the defendant, operating or running upon the railroad of the defendant between any two points on the earth's surface, or in the State of Oregon; defendant denies that the plaintiff has ever paid to it the fare for transportation between any points on the defendant's line or lines of road.

III.

Answering paragraph V of the plaintiff's complaint, the defendant denies that while plaintiff was as aforesaid, or at all, or in any manner a passenger upon the said train, or any train of the defendant, the defendant wrongfully, or maliciously, or wantonly, or wilfully assaulted, or insulted, or maltreated the plaintiff, or by force or arms ejected the plaintiff from said train or any train; defendant denies that it ever in any manner ejected the plaintiff from any of its trains, or at all, or wrongfully, or maliciously, or wantonly, or wilfully assaulted or insulted, or maltreated the plaintiff at any time or place, or under any circumstances, or at all; denies that at any time or place under any circumstances, the defendant, by force or arms, ejected the plaintiff from the said train of the defendant, or any train of the defendant.

IV.

Answering the next paragraph of plaintiff's complaint (also marked "V"), the defendant denies that by reason of the said acts of the defendant, or any acts of the defendant, the plaintiff suffered both physical and mental injuries or suffered either physical or

mental injuries; the defendant denies that the plaintiff has ever by any act or acts of the defendant, at any time or place suffered either physical or mental injuries, or both physical and mental injuries, or any kind of injuries whatsoever, or at all.

V.

Answering paragraph VI of the plaintiff's complaint, defendant denies that by reason of the said acts of the defendant, or of any act or acts of the defendant, or at all or by reason of the said injuries so suffered by the plaintiff, or by any injuries ever suffered by the plaintiff or at all, or as aforesaid, the plaintiff has been damaged in the sum of ten thousand (\$10,000) dollars, or in the sum of one (\$1) dollar or in any sum whatsoever or at all; defendant denies that the plaintiff ever, by any acts of the defendant, or any injuries ever resulting from any acts of the defendant has been damaged in the sum of ten thousand (\$10,000) dollars or in any sum whatsoever, or at all.

Wherefore, defendant prays judgment against plaintiff; that the plaintiff take nothing by this action; but on the contrary, that the judgment of this Court may be in favor of the defendant, and that it may go hence with its costs.

JOSEPH D. REDDING,
Attorney for Defendant.

STATE OF CALIFORNIA, }
City and County of San Francisco. } ss.

T. K. Stateler, being duly sworn, deposes and says: that he is an officer of the defendant, the Northern Pacific Railroad Company, to-wit, the General Agent

of the passenger department thereof; that he has read the within answer and knows the contents thereof; that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

T. K. STATELER.

Subscribed and sworn to before me this 17th day of June, A. D. 1893.

(Seal.)

HENRY M. MCGILL,
Notary Public.

[Endorsed]: Due service of the within and receipt of a copy thereof is hereby admitted, this 17th day of June, 1893. George Lezinsky, Atty. for Plff. Filed June 17th, 1893. L. S. B. Sawyer, Clerk. By W. B. Beaizley, Deputy Clerk.

In the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California.

FRANK PAUSON,

Plaintiff,

vs.

NORTHERN PACIFIC RAILROAD COMPANY,

Defendant.

No. 11,807.

Verdict.

We, the jury, find in favor of the plaintiff, and assess the damages at the sum of three hundred and ten (310) dollars.

GEO. R. FLETCHER,
Foreman.

[Endorsed]: Filed December 18, 1894. W. J. Costigan, Clerk. By W. B. Beaizley, Deputy Clerk.

UNITED STATES OF AMERICA.

*In the Circuit Court of the United States, Ninth Circuit,
Northern District of California.*

FRANK PAUSON,

Plaintiff,

vs.

NORTHERN PACIFIC RAILROAD COM-
PANY,

Defendant.

Judgment on Verdict.

This cause came on regularly for trial. The said parties appeared by their attorneys. A jury of twelve persons was regularly empaneled and sworn to try said cause. Witnesses on the part of plaintiff and defendant were sworn and examined. After hearing the evidence, arguments of counsel and instructions of the Court, the jury retired to deliberate upon a verdict, and subsequently returned into court, and being called, all answered to their names, and presented the following verdict: "In the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California: Frank Pauson, plaintiff, vs. Northern Pacific Railroad Company, defendant:

"We, the jury, find in favor of the plaintiff, and assess the damages at the sum of three hundred and ten (\$310) dollars. Geo. R. Fletcher, Foreman."

Wherefore, by virtue of the law, and by reason of

the premises aforesaid, it is ordered, adjudged and decreed that said Frank Pauson, plaintiff, have and recover from said Northern Pacific Railroad Company, defendant, the sum of three hundred and ten dollars, together with the said plaintiff's costs and disbursements incurred in this action, amounting to the sum of \$102.50.

Entered this 18th day of December, A. D. 1894.

W. J. COSTIGAN,
Clerk.

A true copy. Attest:

W. J. COSTIGAN,
Clerk.

*In the Circuit Court of the United States, Ninth Judicial
Circuit, in and for the Northern District
of California.*

FRANK PAUSON,

vs.

NORTHERN PACIFIC RAILROAD COM-
PANY.

} No. 11,807.

Certificate to Judgment Roll.

I, W. J. Costigan, Clerk of the Circuit Court of the United States, for the Ninth Judicial Circuit, Northern District of California, do hereby certify that the foregoing papers hereto annexed constitute the judgment roll in the above-entitled action.

Attest my hand and the seal of said Circuit Court this 18th day of December, 1894.

(Seal.)

W. J. COSTIGAN,
Clerk.

[Endorsed]: Judgment Roll. Filed Dec. 18, 1894.
W. J. Costigan, Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
Northern District of California.*

HONORABLE JOSEPH MCKENNA, Judge.

FRANK PAUSON,

Plaintiff,

vs.

NORTHERN PACIFIC RAILROAD CO.,

Defendant.

No. 11,807.

Defendant's Bill of Exceptions.

Be it remembered that the above-entitled cause came on regularly for trial in its regular order upon the calendar, the 13th day of December, 1894, George Lezinsky, Esq., appearing as attorney for plaintiff, Joseph D. Redding, Esq., appearing as attorney for defendant.

Thereupon a jury was duly empaneled and sworn to try said cause, whereupon the following proceedings were had, to-wit:

Testimony of Frank Pauson.

Called in his own behalf—sworn.

Mr. Lezinsky:

Q. What is your full name?

A. Frank Pauson.

Q. Are you the plaintiff in this case?

A. Yes, sir.

Q. What business are you engaged in?

A. In manufacturing and dealing in clothing.

Q. Are you a member of any firm?

A. I am one of the firm of Hyams, Pauson & Co.

Q. Is your firm engaged in business in San Francisco?

A. Yes, sir.

Q. At what place?

A. At 25 and 27 Sansome street.

Q. Have you any other place of business in San Francisco? A. Yes, sir.

Q. What other?

A. Got Chicago Clothing Company, corner of Post and Kearny.

Q. Your firm is also the owner of that establishment? A. Yes, sir.

Q. Are you engaged in business in Seattle?

A. Yes, sir.

Q. What is your firm there?

A. Hyams, Pauson & Co., Seattle.

Q. What is the extent of your business in Seattle?

A. What do you mean by extent?

Q. How much of a business do you carry on?

A. We have, I think, the largest business in that line in Seattle.

Q. The largest clothing establishment in Seattle?

A. Yes, sir.

Q. Are you also engaged in business in any other place? A. We also have a place in Tacoma.

Q. You have a retail clothing establishment there?

A. Yes, sir.

Q. How long have you lived in this city, Mr. Pauson? A. Twenty years or more.

Q. Have you been engaged in business in this way ever since you have been here?

A. The firm I am into now, we have been engaged in business for over 10 years.

Q. On the 6th of September, 1892, were you engaged in this clothing business in Seattle? Where

were you on the 6th of September, 1892, Mr. Pauson?

A. In Seattle.

Q. Would you state whether or not on that day you did anything in regard to taking passage upon a train of the defendant from Seattle to Portland?

A. I had one of our men in the store telephone to the office for a berth, and they answered they have nothing but an upper berth, and I told them I would take what I could get, of course, and that evening, I believe the train left right after 10 o'clock. I went in company with two of our men from the store down to the office. I went up to the office and asked for my ticket—sleeper—I asked the agent there. Says I: "Have you got a sleeper for me that has been engaged this afternoon?" He says: "What is your name?" and I told him. He says: "Your ticket." I gave him my ticket, and he looked at it and turned it over and laid it on the board at the office, and give me pen from behind his ear, and says: "Please sign that." I signed it and he took a blotter and dried it. I wrote it pretty coarse as it happened, and he dried the ink on it, and picked up the ticket, and went back and got what I supposed was a ticket berth for the sleeper, and he folded them up together and handed them over to me, and I put them in my pocket. He told me he wanted \$2.00 for the berth, and I paid him. I went on the sleeper and went to bed.

Q. How long after this transaction took place with this agent was it that you went on board the train?

A. It was shortly afterwards. After I had my ticket and got it in my pocket, I was talking with Mr. Redelsheimer, Manager of the store, and Mr. Stern,

who was with me, talking about something about the business of the store, and went on the train and went to bed, and shortly after, I suppose, the train left. I was asleep when the conductor came around, and he asked for my ticket. I had put my ticket under a pillow, in order not to be annoyed, so I could get it when asleep—under my pillow, in order to have it handy when the conductor comes. So I handed him the ticket, and he looked at it, and he told me that I could not ride on that ticket. I was surprised, and thought maybe I gave him the wrong ticket or something, and I asked him what the trouble was with it, and he said, "That ticket won't go," and I explained the matter to him. I looked at the ticket, examined the ticket, and seen where there was a place where it says, "Station Agent stamp here," and I seen there was no stamp on it. I explained the matter to him, and I says, "I have done my part." I presented the ticket in the presence of two of our men from the store, and I described to him what I had done in regard to it, and that the ticket was all right; that I got the ticket and paid for it, and signed it in his presence—all that was required me to do, and he says, "That don't make any difference; I know my business and the ticket ain't no good, and you cannot ride on it." I told him I had positively paid for the ticket, and it was my own until I had used it up, and "I am going to ride on it." He says: "You cannot, and I know my business, and you cannot ride on this ticket." And we talked the matter over for sometime, and I hated to get out of bed, and told him so. And he says: "You have either got to

pay your fare or get off." I told him: "You mean, according to that, I have got to get out of bed and dress myself?" He says: "That is what you have to do, and I got up and dressed myself, and before I got through dressing, the train stopped, and the conductor came to me, and I was not quite done yet, and he waited until I got through, and he says: "Now, get off the train." I told him, "No, I would not; I wanted to ride on the train, and I had paid my fare, and I did not want to get off." He says: "All right, I will put you off." I says: "All right, you will have to put me off; I won't go until I am put off." He says: "Have you any baggage," and I says: "Yes," and I pulled satchel from under the bed, and I am not positive, but I think the porter took my satchel, and he led me out of the train onto the platform. When I was on the platform, it looked really—I could not see any light—only a small station there, and asked him if he knew where I could find a hotel or place to stop over night, and he says he don't know, he don't care a damn. I looked around there, and did not like to lay out all night, and did not see any place where I could go to. I told him, "I think I had better pay my fare and go on," and I went on the train and paid my fare and went on.

Q. Mr. Pauson, in this conversation that took place between you and the conductor, in what tone of voice was that conversation in, as to whether or not it could be heard by people who were in that train—in that car?

A. Everybody in the train very likely—in the car, could hear it, no doubt.

Q. Do you know whether or not any people who were in that car were up or not?

A. There was one party up there—an insurance agent, and I had his name and his card, but I could not find him. He asked me what the trouble was.

Mr. Redding—I move to strike out the answer of the witness as to what the insurance agent said. That was not in the presence—

The Court—It is not testimony. Gentlemen of the jury, you will disregard that. Please do not state anything except what the conductor said.

Q. (Mr. Lezinsky)—You know at least that one gentleman there heard what took place; you know that of your own knowledge?

Mr. Redding—I do not want to delay the putting in of the case by the plaintiff, but that question is directly leading and puts the answer—

The Court—It is leading, but he has already substantially answered it.

Q. Mr. Lezinsky—Would you state, Mr. Pauson, whether or not there was any other person there with the conductor when he came to you when the train came to a stop and put you off the train?

A. Yes, sir, the porter was there.

Q. Was anybody else there?

A. I did not notice anybody else there at that time—only afterwards when I got back on the train.

Q. (Mr. Redding)—Do I understand then, at the time you met this insurance gentleman was after you returned to the train?

A. After I returned to the train.

Q. (Mr. Lezinsky)—You say you are not positive whether or not the porter took your baggage or not?

A. I am not, but I think he did.

Q. Could you say whether you took it yourself?

A. No, sir; I did not.

Q. That you are positive of, that you did not take it?

A. No, sir; I did not.

Q. Was this baggage put off the car when you were put off?

A. Yes, sir; set on the platform of the station.

Q. Who took the baggage back to the car, Mr. Pauson?

A. I don't know—I don't remember.

A. (The Court)—It was taken back, was it?

A. Yes, sir.

Q. (Mr. Lezinsky)—Would you state, Mr. Pauson, what was your condition of mind, and what were your feelings while this transaction was taking place between yourself and the conductor—how did it affect you?

A. My feelings were naturally—I was excited, and felt bad on being put off of the train. Never had anything of that kind happen to me before, and I travel a great deal. I felt naturally insulted and degraded, and consider I was treated just like a tramp in being put off the train.

Q. Had you any other business transactions with this railroad company, Mr. Pauson?

A. In what respect?

Q. In the way of handling freight for you?

A. Oh, yes, we are shipping considerable freight all the time.

Q. Did you do considerable business with them in that way?

A. We do.

Q. Did that fact in any way enter into your consideration of the matter?

A. I don't know as it did:

Q. When you came back to the train—what did you do after you came back to the train?

A. I talked to the conductor in reference to the affair, and told him who I was, and told him I was certainly put off the train wrongfully—explained the matter to him—told him how the whole thing happened—told him the same thing over again before he put me off, and the conductor told me he was satisfied in his mind that I was the right man, that it was my ticket, and that I was the right party, and I told him that I belonged to the firm in Seattle, and he told me that he had his instructions, and he had to do according to his instructions.

Q. Did you go back to your berth and continue your sleep until the train got to Portland after you came back?

A. I stayed up until after we left Tacoma—some time afterwards.

Q. You then remained up until the train got to Tacoma? A. Yes, sir.

Q. Why was it that you did that, Mr. Pauson?

A. Well, I had several reasons for it; one was, I could not have went to sleep if I had want to, because I felt hurt over the affair, and second, because I had to get the ticket from Tacoma.

Q. Was that on account of the conductor's division only taking up to Tacoma?

A. The conductor only went as far as Tacoma.

Q. When you went back to the train, to what place did you pay your fare?

A. I paid it at the ticket office, at Tacoma.

Q. I mean, when you went back on the train, to what place did you pay your fare; did you pay this conductor's fare to Portland?

A. No, sir; I paid it to Tacoma.

Q. How was it that you did not pay it to Portland, if you were going to Portland?

A. Well, the conductor very likely would not take any further than he would go. I don't know the reason why.

Q. It was on his division?

A. It was on his division, yes, sir.

The Court—Did you tender it to any further point than that?

A. I did not.

Q. Just offered to pay your fare to Tacoma?

Q. (Mr. Lezinsky)—Did you offer to pay your fare to Tacoma or to Portland?

A. He told me that he was only going to Tacoma, and I paid my fare as far as he went. He asked me for my fare as far as Tacoma; that is all he asked me, and I paid him.

Q. To make that matter plain Mr. Pauson, was it at your instance or at his instance, that the fare was only paid to Tacoma?

A. He only asked me for that and I paid him what he asked me for.

Q. Then when you came to Tacoma, what did you do?

A. I went up to the agent and asked him for a ticket to Portland, and he gave me one, and I paid him for it. When I came to Tacoma I went to the ticket agent and bought a ticket for Portland.

Q. Did you then return to the train?

A. Yes, sir.

Q. Did you return to your berth in this Pullman car?

A. Yes, sir.

Q. Did you sleep the balance of the trip from Tacoma to Portland?

A. I slept some during the night, yes, sir.

Q. Did this transaction that had taken place before that time make any difference in your rest or in your feelings during the balance of that trip?

A. Certainly, I felt bad and excited over it naturally like any body else would—I don't know whether any more or less.

Q. Did it interfere with—

A. It certainly did.

Mr. Redding—With what?

Q. (Mr. Lezinsky)—With your sleep during that trip?

A. Yes, sir.

Q. To what extent as near as you can state?

A. It annoyed me during the night the same as any man who is put off a train wrongfully—consider it hurt my feelings—excited over it—agitated.

Q. Do you remember, Mr. Pauson, what was the amount of fare you paid in order to make the trip from Seattle to Portland?

A. I do not. I paid—it is somewhere in the neighborhood, I think, of \$7.00. I think \$7.00 or \$8.00, between Seattle and Portland. I don't know the exact amount of the fare, what it is—maybe a little less than \$7.00; something in the neighborhood of \$7.00. I don't know exactly what it is—\$7.25—\$7.50.

Q. Mr. Pauson, when the conductor came back and finally said he would put you off, and placed his

hands upon you, as you said, did he keep his hands upon you while you were going off the car?

A. Yes, sir.

Q. All the time?

A. Yes, sir; he kept hold of me until he got me on the platform.

Q. And what did he do after you got to the platform, Mr. Pauson?

A. I don't know what he done. I asked him then if he could tell me any place where I could stop, and he said he did not know of any, and he did not care a damn.

Q. Is that the platform of the station or the platform of the car?

A. Platform of the station.

Q. Platform of the station? A. Yes, sir.

Q. That is, he led you entirely off of the platform of the car and on to the platform of the station?

A. Yes, sir.

Q. Did you make any further resistance other than what you have stated? A. None, no, sir.

Q. Will you please state if there was any reason why you did not make any further resistance?

A. I do not believe it would have been any use for me to make any resistance. He had hold of me to take me off, and I did not want to resist—did not want to have a fight.

Q. Did you see any other of the officials or employees of this train at any time while this transaction took place until you got on to the platform of this station? A. No, sir, I didn't.

Q. When you got on to the platform of that station, did you see any other officials of the train?

A. Yes, sir; I saw one brakeman, I believe, and the porter and the conductor. The conductor, porter, brakeman and myself were on the platform. That is all I seen.

Q. How far was this brakeman from you?

A. We were all close together.

Q. Mr. Pauson, I will ask you if you have ever seen that document before? A. Yes, sir; I have.

Q. What is it?

A. That is the ticket that I bought in Portland for a round-trip ticket from Seattle and back to Portland.

Q. Is that the ticket that you presented to this agent at Seattle?

A. Yes, sir; that is the ticket.

Q. And is that the ticket that you presented to the conductor on the train? A. Yes, sir, same ticket.

Q. Is this signature on the back of this ticket the signature that you wrote at the window station at Seattle? A. Yes, sir, that is the signature.

Mr. Lezinsky—We offer this ticket in evidence, if your Honor please.

Mr. Redding—If the Court please, the defendant objects to the introduction of this ticket, on the ground that the same is immaterial, irrelevant and incompetent; that it is incompetent in that it is confessedly a mutilated ticket—that the entire ticket is not here. There is a portion of the ticket that has been torn off, and the counsel for the plaintiff so stated.

The Court—But the witness does not say so. He states that it is the identical ticket that he presented to the agent, and that is the ticket that he presented to the conductor.

Mr. Redding—I reiterate the objection on the ground that it is immaterial, irrelevant and incompetent, in that as the ticket was presented by the plaintiff to the defendant's agent or conductor, it is an incomplete and mutilated ticket.

The Court—Where is the evidence of that as far as the witness is concerned?

Mr. Redding—And that the ticket is not stamped, and has not the proper witness called for by the rules and regulations of the ticket.

The Court—That is as to its sufficiency afterwards. Is that all of the ticket?

Mr. Lezinsky—That is all of the ticket, if your Honor please.

The Court—Is this all of the paper that was presented to the agent?

Mr. Lezinsky—No, sir. There was, as I have stated to the jury, a sort of notice or form that was attached to this ticket that was no part of the ticket.

The Court—It ought to go with the ticket.

Mr. Lezinsky—If your Honor please, in presenting this case, we will make the matter clear to your Honor and the jury both. This matter is no part of the ticket. It is a notice to the passenger, and it is no part of the ticket, and we do not desire to have it confused with the ticket. Our contention is, as was held on the former trial of this case, that this was no part of the ticket, and it is a circular. We have no objection to this going in as a notice or circular attached to the ticket, and I shall put it in.

The Court—It should go in.

Mr. Lezinsky—I propose to have it go in. I offer the ticket.

The Court—The integrity of this paper is a proposition by itself. The paper that was issued by the railroad company, whether you afterwards call it a ticket or not a ticket, is the paper that ought to be presented in evidence, because it was that paper that he received and that paper which he presented to the agent, and that paper which he presented to the conductor. You might cut off some other part and claim that it was not a part of the ticket.

Mr. Lezinsky—I offer this as the ticket.

The Court—You had the witness make a construction of the document, and you might have put the witness in a false position. The witness answered that is the ticket he presented.

Mr. Lezinsky—That is the ticket.

The Court—He is using the word ticket in a technical sense, and I am very clear that it must go in as a part of the ticket.

Mr. Lezinsky—I propose to put it in, but I do not put it in as a part of the ticket.

The Court—As a part of the paper.

Mr. Lezinsky—I shall offer it afterwards as a part of the paper.

The Court—Under your statement now, I shall sustain the objection. You must put it in.

Mr. Lezinsky—Mr. Pauson, I would ask you if these two pieces of paper that I hand you, were the pieces of paper that you handed to the agent at Seattle and to the conductor upon the railroad train?

A. Yes, sir.

Q. Were they together at that time?

A. They were.

Q. They were together then? A. Yes, sir.

Mr. Lezinsky—We offer them in evidence, if your Honor please.

The Court (To Mr. Redding)—The other objections that you made I will overrule for the time being. It is a question of law that goes to the whole case.

Mr. Redding—I reiterate at this time, for that purpose, that the ticket shows on its face that it is not stamped or witnessed, and I also renew my objection that the ticket, as now offered, shows it is in a mutilated form, and was not the ticket that was presented at that time, and that the ticket, as now produced, has been forced into the case at our instance, and not as the original ticket offered.

The Court—I do not think that is any objection. The objection is overruled.

Mr. Redding—I note an exception.

(It is marked Plaintiff's Exhibit "A.")

Q. (Mr. Lezinsky)—I will ask you, Mr. Pauson, if you have seen that document before? A. Yes, sir.

Q. Will you state what it is?

A. I had a berth—a ticket for a berth—in the Pullman car, and I had to give up the ticket of the Pullman car that I had purchased, to the porter, and he gave me a check for my berth.

Q. And that is the check, is it, Mr. Pauson?

A. That is the check I received from the porter of the Pullman car.

We offer this in evidence, if your Honor please.

Mr. Redding—No objection.

(It is marked Plaintiff's Exhibit "B.")

Q. (Mr. Lezinsky)—Will you state, Mr. Pauson, whether or not you have ever seen that document before? A. Yes, sir.

Q. Will you state what it is, Mr. Pauson?

A. After I went back on the car and paid my fare, I asked the conductor for a receipt and he gave me this for it.

Q. Is not that the usual form of receipt which is given by conductors on that railroad which is in the form of an order on the company for 25 cents? They charge you 25 cents additional, which you can receive at any office of the company by giving this document up?

Mr. Redding—I move to strike that whole question out as leading.

The Court—Yes, sir; that is leading.

Mr. Lezinsky—We will prove it by the conductor. That is the receipt you got for your money?

A. That is the receipt I got for my money.

Mr. Lezinsky—We offer that in evidence, if your Honor please.

Mr. Redding—No objection.

(It is marked "Plaintiff's Exhibit C.")

Q. (Mr. Lezinsky)—For what fare was that?

A. For the fare from Seattle to Tacoma.

CROSS-EXAMINATION.

Mr. Redding:

Q. How much did you pay for this round trip ticket in its original form, Mr. Pauson?

A. Ten dollars.

Q. Ten dollars?

A. I think that is what it was.

Q. That was to go from Portland to Seattle and back from Seattle to Portland? A. Yes, sir.

Q. And at the time you purchased that ticket the addition which was adduced and introduced after the first part of it was introduced—this portion of the ticket—was a part of it, was it not?

A. Yes, sir.

Q. Making one slip of paper? A. Yes, sir.

Q. I will ask you to read that, if you please?

Mr. Lezinsky—I suppose the whole ticket might be read in evidence.

The Court—You ought to have read it when you offered it, but you did not.

A. It says: "To purchaser: Read the above contract, and take notice that the return part of this ticket must be stamped and your signature witnessed in the manner prescribed, before it will be honored for passage."

Mr. Redding—You saw this whole ticket when you purchased it, did you? A. Yes, sir.

Q. Read it.

A. I did. I did not read all the conditions, but very near all. I know those tickets; I have traveled on them before.

Q. This was your ticket?

A. Yes, sir; was my ticket.

Q. And you bought it and paid for it?

A. Yes, sir.

Q. And this portion of the ticket was on it at the time you were in Seattle? A. Yes, sir.

Mr. Lezinsky—We object to that as leading and not correctly stating the proposition. We claim this was not a part of the ticket.

The Court—Your objection is overruled. In the first place he has the right to ask leading questions on cross-examination, and the other statement was a statement to which the witness assented.

Mr. Lezinsky—Very well.

Mr. Redding—Do you know how this piece of paper came to be torn off?

A. I believe so, yes.

Q. How was it done?

A. I think the attorney had it in his possession, and he said it was no part of the ticket—it was no part of the contract, and which belonged to the purchaser, and he said it was not required on that at all.

Q. Then you know as a fact that your own attorney tore this portion off of the ticket?

A. I don't know as he did, but he told me so.

Q. He told you so. That is all I want to know. When you and the conductor had the conversation in the car about your paying fare from the point where you were to get off, on to Portland, in what manner did you pay your fare to him—by what form of money? A. I am not positive; I could not tell.

Q. Was it in greenbacks or silver or gold?

A. I don't think it was in greenbacks. I thought I had paid him in silver, but it might have been gold—I am not positive.

Q. How much—do you remember?

A. I don't know the exact amount. I think it was between \$1.00 and \$2.00.

Q. Then I understand you had used half of this ticket; and paid \$10.00 for the whole ticket?

A. Yes, sir.

Q. And you had already ridden from Portland to Seattle? A. Yes, sir.

Q. Using about one-half of the ticket?

A. Yes, sir.

Q. That would be \$5.00?

Mr. Lezinsky—We object to that. That is not the fact. It was the ticket one way.

The Court—He is asking the witness if that is the fact.

Q. Mr. Redding—You had used one-half of the ticket, had you not? A. Yes, sir.

Q. From Portland to Seattle? A. Yes, sir.

Q. And you wanted to use the remaining one-half value of the ticket from Seattle back to Portland?

A. Yes, sir.

Q. Is this a receipt for the full amount of money you gave to the conductor? A. Yes, sir.

Q. Just read what is on the back of your receipt if you please, to the Court and jury and counsel?

A. That is written by the conductor you mean?

Q. Yes, sir.

A. "This fare collected acct. N. P. ticket S. P. Tourist No. 7202 not having been witnessed and stamped for return passage J. W. Stamper, Conductor No. 13, 9-16."

Q. How much did that receipt show was paid by you to the conductor?

A. It don't say that I know of.

Q. You testified on direct-examination that this was the form of receipt?

Mr. Lezinsky—As a matter of fact the ticket does not show anything but the payment of fare from Seattle to Tacoma, but does not state any amount.

Q. (Mr. Redding)—How much did you pay him?

A. I could not state exactly, but between \$1 and \$2.

Q. It was under \$2?

A. Yes, sir. I was trying to find out from there, but I could not find it.

Q. We will call it \$2.

A. No, I don't think it was \$2. I don't know exactly—must be \$1.25 or \$1.50, or something—might be \$2—I don't know.

Q. The round trip ticket was \$10? A. Yes, sir.

Q. How much did you pay from Tacoma to Portland when you went into the station at Tacoma and purchased your fare from Tacoma to Portland—how much did you pay?

A. Something in the neighborhood of \$5—I don't know the exact amount.

Q. Was it over \$4? A. Yes, I think it was.

Q. Was it over \$5?

A. I don't think it was—somewhere in that neighborhood.

Q. You are sure it was not over \$5?

A. I don't think it was; I am not sure; in the neighborhood of \$5.

Q. I understand your point of destination, where you were intending to go, was from Seattle to Portland? A. Yes, sir.

Q. Did you reach Portland at the same time that you would have reached it had not this occurrence taken place? A. I did.

Q. Then you were not delayed at all in your travels between Seattle and Portland? A. No, sir.

Q. I understand that during the first conversation that you had with Mr. Stamper, the conductor, there was no one present—that was entirely between you and him? A. The porter was present, I think.

Q. Was the porter present at the beginning of the conversation? A. I think so.

Q. Do I understand you to say that the porter came up with the conductor to collect the fare from you?

A. I think somebody was with him; the porter, I think, was with him during the conversation.

Q. Where did Mr. Stamper write and sign this receipt? A. I believe at Tacoma.

Q. At Tacoma? A. Yes, sir.

Q. He went with you into the ticket office window there, did he not? A. Yes, sir.

Q. What did he go there for?

A. He told me on the car, if I would go up to the office with him at Tacoma, he might get it fixed.

Q. When the cars reached Tacoma, he went with you up to the ticket office, having told you that when he did reach Tacoma, he would go to the office and endeavor to get this matter fixed?

A. Something of that sort.

Q. Why didn't you let him fix it for you?

A. I told him I had nothing to fix; I was able to pay my fare now, and I would pay it. He refused my ticket and he made me get off the car, and I paid my fare and I had nothing more to do with it.

Q. If he offered to fix it, so you would not have to pay any additional sum of money, why didn't you let him do it?

Mr. Lezinsky—I object to that as entirely immaterial and irrelevant.

The Court—It is material as some explanation of the defendant's conduct. (Question read.) Answer the question?

A. Well, I considered he had done me a wrong, and he could not right it; that he had ejected me from the car, and had put me to a great deal of humiliation and annoyance and trouble, and he could not fix it there—he was not able to fix it.

Q. (Mr. Redding)—What was the time of night when the conductor first called on you for your ticket?

A. Must have been about 11 o'clock. We left Seattle a little after 10—about a quarter past ten.

Q. This was in September—the 6th of September?

A. Yes, sir.

Q. Don't you know as a fact that the conductor preceded you out of the car?

A. No, sir, he didn't.

Q. Pardon me. Let me finish the question. And that he carried your valise?

A. No, sir, he did not precede me. He had me by the arm and he led me off.

Q. Can you testify under oath to this jury that he did not have your valise in his hand?

A. I don't think he did. I think the porter had my valise.

Q. Are you sure that he had?

A. To the best of my knowledge he had it.

Q. Will you swear that the porter had your valise?

Mr. Lezinsky—I object to that as not a proper form of question.

The Court—(After reading question.) I think the question is objectionable.

Q. (Mr. Redding)—Do you know as a matter of fact the porter had your valise?

A. To the best of my knowledge he had it.

Q. Are you sure of it?

A. I think I am.

Q. Was there any conversation between you and the conductor, at the time you and him walked through the car from your section towards the door?

A. Nothing more than he led me. There was no conversation from the time he took hold of me until he put me off.

Q. No conversation at all occurred?

A. None that I know of.

Q. Was there any noise or scuffling?

A. No, sir, no scuffling.

Q. All done quietly, was it?

A. He took me by the arm, and I submitted to it, and he led me off of the car.

Q. Where did the conversation occur between you and the conductor, upon which you paid your fare, and the car proceeded with you upon it?

A. On the car.

Q. Where were you standing?

A. I could not tell you where I was standing.

Q. Was it on the platform of the car?

A. Let me hear your question again. (Question read.) When he first asked me for my fare—when we

talked about the fare, I was standing on the platform of the depot—station—told him “I guess I will pay my fare now and go on.”

Q. Do I understand you to say that after you had reached the platform of the depot he then demanded a fare of you?

A. I told him after he put me off, and he told me he did not know whether there was any place to stop and he didn't care a damn. I was afraid to stay there, and told him I would pay my fare and go on.

Q. Then what occurred?

A. He says, “Very well; pay your fare and you can ride.” Then I went on and paid my fare.

Q. Where did you pay your fare?

A. I could not say positively whether it was on the platform or inside.

Q. Nor do you remember in what form you paid it, whether it was in gold or silver?

A. I don't remember whether it was gold or silver.

Q. Don't you remember as a fact, Mr. Pauson, that you gave him a twenty-dollar piece, and he had not the change, and when he got to Tacoma he went to the window and got it changed?

A. He said so in his testimony, and very likely it was the case—very likely, because I don't remember.

Q. What did he state to you at your berth when you showed him this ticket with reference to his duty about the ticket, and its not being stamped or witnessed?

A. He told me that I could not ride on that ticket, and I asked him the reason why, and he said it was not good. I had inferred from that I had given him

the wrong ticket; I had lots of papers in my pocket, and I looked, and when I looked I seen the ticket was not stamped, and I told him—I asked him if that was the reason he did not take the ticket, and he said, “The ticket is not proper, and I will not take it,” and I told him I had presented it at the ticket office, and told him the same story in regard to the ticket I have told here, that I had two parties with me at the time—two friends that seen me off, and told him the full particulars in regard to it, and he said it did not make any difference, he knew his business, and I could not ride on the ticket.

Q. What did he say about his instructions?

A. He had his instructions and he knew his business, and I could not ride on the ticket.

Q. Then, did he offer to accept your fare and arrange it with you at Tacoma?

A. He said I either had to pay the fare or get off—did not say anything about arranging there—not there. He did after I got on the train, and when I explained to him how it was wrong, and he said he was satisfied I was correct and the correct party, and the holder of the ticket, and he said he would try and fix it when we got to Tacoma.

Q. He did offer to let you ride if you paid your fare at that time, before you left the car?

A. He said I either had to pay the fare or get off the car.

Q. Did you understand if you had paid your fare at that time that you could have ridden on?

A. I suppose I could.

Q. Mr. Pauson, your complaint states that “while the plaintiff was, as aforesaid, a passenger upon the

said train of the defendant, the defendant wrongfully, maliciously, wantonly and wilfully assaulted, insulted and maltreated the plaintiff, and by force and arms ejected him from the said train." In what way did the conductor assault you?

Mr. Lezinsky—I object to that, if your Honor please, on the ground that is a conclusion of law for the jury to find out from the evidence. Your Honor will charge the jury what is an assault, and that is a matter of law. It is a legal expression and apt to confuse the witness, and we object to it on that ground. We object to it on the ground it is already in evidence and testified to.

ARGUMENT.

The Court—He has a right to cross-examine him. I overrule it.

Q. (Mr. Redding)—How were you assaulted by the conductor?

A. The conductor took me by the arm, and he asked me to go, and I says, "I won't go unless I am put off," and he says, "I can do that easy enough," and he took me by the arm, and put me off.

Q. Did he drag you or did you walk?

A. He did not drag me.

Q. Did he push you or did you walk?

Mr. Lezinsky—We object to that on the ground it is a repetition.

The Court—Mr. Redding has a right to repeat to a certain extent.

Mr. Redding—Did he push you off?

A. No, sir; he took me by the arm and led me off.

Q. Did you walk off by your own volition?

A. No, sir; by his own assistance.

Q. Did he assist you physically?

A. He took me by the arm and led me off the car.

Q. Did he in anywise assist you in any physical movement off the car?

A. He certainly did by leading me.

Q. How much force did he use in leading you?

A. I did not want any force; I did not want to be hurt.

Q. Then he did not use any force?

A. He took me by the arm and led me off.

Q. (The Court)—Did he do any more than lead you off with his arm on you?

A. Certainly he did. He put his arm on me and led me off.

Q. Did you resist?

A. I certainly did not.

Q. Then he did not have to overcome any resistance at all?

A. No, sir; certainly I offered no resistance.

Q. (Mr. Redding)—How long was the train delayed at Kent?

A. I don't know how long it stopped there.

Q. I will withdraw that question. I meant to ask you how long you and the conductor were outside of the door of the Pullman car?

A. Just as long as I told you. He put me off and I asked him those questions, if there was any place that I could stop at, and he told me did not know nor he didn't care a damn, and I looked around and it looked very dreary in the middle of the night—

The Court—That is not an answer to the question. He asked you how long you stopped there. Answer the question and explain afterwards.

A. It could not have taken more than a minute or two. I was just trying to explain how long it took.

Q. You have explained that two or three times.

A. I could not tell exactly whether it took half a minute or three-quarters of a minute, or two minutes, or 3 minutes or 5 minutes.

Q. (Mr. Redding)—You think it was about a minute and a half?

A. O, yes sir; it was several minutes—a minute and a half or two minutes.

Q. What was the manner of the conductor towards you when he asked you for your ticket to begin with?

A. He woke me up and asked me for my ticket. I was asleep when he come.

Q. Was his manner courteous or discourteous?

A. I think his manner was all right—"Ticket, please"—the same as he would ask any passenger.

Q. You did not have any angry words with him about the matter at all?

A. Well, we had considerable talk in regard to it. I did not want to get out of my bed and leave. I wanted to have rest and sleep.

Q. Did the conductor talk angrily to you at all?

A. He talked quite harsh and I talked to him.

Q. What did he say harshly to you?

A. He said I would either have to pay my fare to him or get off the car.

Q. Was that said harshly; was there anything more?

A. There was considerable more; I have given it in testimony as near as I remember.

RE-DIRECT EXAMINATION.

Mr. Lezinsky:

Q. Was his tone of voice in any way insulting?

A. It was certainly very annoying to me—very annoying.

Q. You testified some time ago he said, "I can do that easy enough," when you said he would have to put you off. Was that said in a threatening way or an insulting way?

A. Certainly.

Mr. Redding—I ask that that question be stricken out and the answer. This is re-direct, and the attorney is putting into the witness' mouth the adjectives.

The Court—Do not ask leading questions. As far as its being re-direct, I will overrule it. You have no right to put leading questions, because he is your witness.

Mr. Lezinsky—I will ask you what was his tone of voice and his attitude towards you in that conversation and that transaction?

A. He asked me if I was dressed, and I told him "not quite."

The Court—That is not the answer to the question.

Q. (Mr. Lezinsky)—What was the manner of his tone of voice and his attitude towards you in this conversation?

A. It was forcible. He wanted me to get off—he would put me off—certainly it was force; either had to go or he would put me off.

RE-CROSS EXAMINATION.

Mr. Redding:

Q. You say it was forcible? A. Yes, sir.

Q. What do you mean by that?

A. Either I had to get off or he would put me off.

Q. Was his demeanor towards you decent?

A. I told him he would have to put me off.

The Court—Answer the question.

A. It was the same as I think a person would be able to judge, that it was not a very pleasant conversation when he wanted to put me off the train.

Q. (Mr. Redding)—In any way, was his manner to you in style indecent or offensive?

A. I considered it very rough, I considered it did.

Q. Explain to the jury how it was rough on you?

The Court—The counsel is asking you to explain the difference between the language of the conductor and his manner.

A. The conductor told me if I was ready, and I says, "Not quite." When I was ready, he says, "Get off the train," and I says, "No, I will not get off."

Q. Did he ask that as pleasantly as a person could exercise that duty, if it was a duty. I do not assume that it was his duty.

A. I do not think a person could do it pleasantly. He done it, and I consider, if I would not have submitted to it, he would have used force to put me off in a very—

Q. Could you answer that question directly. (Question read.)

A. I consider he done it forcibly.

Q. (Mr. Redding)—That is what we want to know. Explain to the Court and jury and counsel in what way he did it forcibly?

A. He told me simply, if I did not get off, he would put me off, and he could do it very easy. That was all.

Q. He simply said that? A. Yes sir.

Q. Did he do anything more than that?

A. He took me by the arm.

Q. Before he took you by the arm, did he say anything? A. That is all that I can remember.

Q. Did he do that in an offensive manner or decent manner?

A. It was offensive to me.

The Court—That is not an answer to the question. You understand it?

A. I understand it and I consider it very offensive.

Q. (By the Court)—You consider that the conductor's manner was offensive outside of the act. Mark the distinction; being put off the train is one thing, and the manner is another thing.

A. I expect he treated me fair enough in putting me off in that respect. If it was his duty to put me off, considering it perhaps, he could not have done it much milder.

Q. (Mr. Lezinsky)—Mr. Pauson, do you think that he absolutely had to say everything that he said?

Mr. Redding—I object to that as not re-direct.

The Court—Proceed.

Q. (Mr. Lezinsky)—Do you think it was necessary for him to say everything he said to you?

A. It was to put me off.

Q. In order to put you off?

A. I think so, yes. I would not have went any other way.

Q. Do you think that he could not have used a more gentle tone of voice to you in his address to you if he had tried?

A. I suppose he could, if he tried.

Q. Do you suppose he could?

Mr. Redding—I object to that as leading.

The Court—Yes, that is leading. This is your witness.

Q. (Mr. Lezinsky)—I will ask you this, Mr. Pauson. Do you mean to be understood as saying that the conductor did everything that he did there in as courteous a way as he could?

Mr. Redding—I object to that as leading, if the Court please.

The Court—Yes, that is leading.

Q. Would you explain what you mean Mr. Pauson, when you say that you believed that the conductor was as gentle as he could be, or as courteous as he could be, under the circumstances, when he was putting you off? Would you explain your last answers to the last questions put to you by the Court, and by the counsel for the defendant?

A. I explain the question just as near as I can, that I consider I was put off, and it was forcible because he forced me to get off of the train. I would not have went unless he forced me off, and his conversation to me certainly was objectionable, and it could not have been otherwise. He could, perhaps, have used better language, and may be worse.

Q. Will you state what was the condition of temper that the conductor was in as to whether he was excited or not?

A. The conductor certainly was as much excited, or perhaps as much as I was; I don't know that he was.

Mr. Redding—I move to strike out the answer.

The Court—Oh, no; you are too late. It has to be objected to before it is answered.

Q. (Mr. Lezinsky)—I ask you if your statement concerning the manner of the conductor is made considering the condition of temper that you knew the conductor to be in?

Mr. Redding—We object to that as not being re-direct examination.

The Court—It seems to me it is arguing the matter with your own witness.

Mr. Lezinsky—I submit to the ruling of the Court on the proposition.

The Court—I sustain the objection.

Testimony of J. Redesheimer.

Called for plaintiff—sworn.

Mr. Lezinsky:

Q. Where do you reside?

A. Seattle, Washington.

Q. Where did you reside on the 6th of September, 1892?

A. Seattle.

Q. Do you know Mr. Frank Pauson, the plaintiff in this case?

A. I do.

Q. Were you in any manner associated with him in business?

A. I am.

Q. On the 6th of September, 1892, at Seattle?

A. Yes, sir, I was.

Q. I what way?

A. Manager of their store there.

Q. You were managing their store there?

A. Yes, sir.

Q. On the evening of the 6th of September, 1892, were you with Mr. Pauson when he went to the office of the Northern Pacific Railroad Company at Seattle?

A. I was.

Q. Did you there observe any transaction that took place between Mr. Pauson and the ticket agent of the Northern Pacific Railroad Company at the ticket station at Seattle?

Mr. Redding—If the Court please, we object to that as being immaterial, irrelevant and incompetent. This is an action of tort.

The Court—It has already been testified to by the other witness, and I think it would be the quickest way to let it in, and argue about the legality of it afterwards.

(Argument. Question read.)

Mr. Redding—I will simply enter my objection at this time.

The Court—The objection is overruled on the ground that the question was answered without objection, before, of the other witness.

Mr. Redding—Exception.

A. I did.

Q. (Mr. Lezinsky)—Will you state what you observed in that respect?

Mr. Redding—Same objection.

The Court—Same ruling.

Mr. Redding—Exception.

A. Mr. Pauson, Mr. Stern and myself went down to the depot. Mr. Stern and myself to escort Mr. Pauson off. He went to the ticket office and went to the window, and wanted a sleeping berth ticket, and the agent requested to see his ticket. Mr. Pauson then pulled his railroad ticket out, and laid it down on the shelf of the window. The agent took it up, turned it around on the back, and handed him pen and ink, and Mr. Pauson then signed his name, and the agent then took up the ticket with his back towards us, and walked into his office further, and returned and handed Mr. Pauson that ticket. And then, afterwards, after Mr. Pauson got his ticket, talking on different subjects until Mr. Pauson got on his train and departed.

Q. What was the condition of the ticket when it was handed back to Mr. Pauson?

A. It was folded.

Q. Folded up?

A. It was folded; yes, sir.

(Same objection, ruling and exception.)

Q. Will you state about how that ticket was folded?

(Same objection, ruling and exception.)

A. I could not just state that, but there is a breakage in all tickets, and it was folded its usual form about that size and about that width. There was nothing unusual about the folding of the ticket.

Q. It was folded in a small compass?

(Same objection, ruling and exception.)

A. Yes, sir.

Q. Were you with Mr. Pauson from the time he received that ticket from the agent until he boarded the train? A. I was.

Q. Did he do anything with respect to that ticket from the time he received the ticket from the ticket agent until he got on board the train?

(Same objection, ruling and exception.)

A. Nothing more than to put it in his pocket. He put it in his pocket.

CROSS-EXAMINATION.

Mr. Redding:

Q. Where did you meet Mr. Pauson first that evening?

A. Mr. Pauson was at our store all the evening.

Q. How near to the ticket office opening were you during the proceedings?

A. I was right in front of the window.

Q. How far from the window?

A. The distance from the shelf to the window—the base of the shelf to the window.

Q. You were standing right there?

A. Right there.

Q. How large a place is this ticket office?

A. Oh, it is probably the width—not quite the width of those three windows there. (About 9 feet.)

Q. Were there any other persons purchasing tickets at that time? A. There were not there.

Q. Anybody else at the window?

A. Mr. Pauson, Mr. Stern and myself were all that were at the window.

Q. Nobody else? A. Nobody else.

Q. How large was the general waiting room in which this ticket office was in?

A. I could not tell you. It was an ordinary waiting room for a town of that size—an ordinary depot.

Q. Do you know whether it is the main ticket office or the branch office of the railroad?

Mr. Lezinsky—We object to that as immaterial and irrelevant.

The Court—It may or may not be. Whether it was a main or a branch office standing by itself, would be immaterial. I cannot tell.

(Question read.)

A. I cannot tell. I don't know which they term their main or which their branch.

Q. (Mr. Redding)—Are there two ticket offices in Tacoma?

Mr. Lezinsky—I object to that as immaterial and irrelevant.

The Court—I overrule the objection.

A. There are two ticket offices.

Q. (Mr. Redding)—You stated that you saw the agent of the railroad company hand Mr. Pauson a pen?

A. I did.

Q. For him to sign this ticket? A. Yes, sir.

Q. How do you know he was the agent of the railroad company?

A. Well, he acted in the capacity. He gave him his sleeping ticket any rate.

Q. Do you know whether it was the Pullman agent behind this ticket place or whether it was the railroad agent?

A. Well, it was Mr. Nadeau, and he is considered the railroad agent.

Q. You know the man, do you?

A. I do, yes sir.

Q. Whom were you talking to at the time Mr. Pauson signed this ticket?

A. We were all three together when he was signing this ticket.

Q. Were you talking to Mr. Pauson at that time or Mr. Stern?

A. I don't know who just at that moment, or whether it was Mr. Stern.

Q. How did it happen that you saw Mr. Pauson write his signature at this time?

A. We were talking, and we all walked up there together as men would, and I stood right there and I could not help see it.

Q. You saw him sign his own name?

A. I saw him sign his own name.

Q. On this ticket at that time?

A. At that time.

Q. In what condition was the ticket when Mr. Pauson took it out of his pocket, if he did so?

A. I really don't know.

Q. Was it folded or open?

A. When he took it out of his pocket it was folded.

Q. Was it not in a little envelope?

A. Yes, sir, it was in an envelope and folded.

Q. Was it not in that condition when it was handed back to him?

A. It was folded when it was handed back to him, as I have described.

Q. Was it in the envelope or don't you know?

A. No, sir.

Q. How? A. I don't know.

Q. You don't know whether it was in the envelope or not? But it was folded when he took it out of his pocket, and it was folded when it was handed back to him? A. Yes, sir.

RE-DIRECT EXAMINATION.

Mr. Lezinsky:

Q. This will not be re-direct examination proper. How long have you lived in Seattle?

A. Five years.

Q. Was this a regular ticket office of the Northern Pacific Railroad Company at Seattle?

A. It was.

Q. Was that the place where the train departed from? A. It was at the depot.

Mr. Lezinsky—If your Honor please, we desire to read in evidence the deposition of Mr. Abraham Stern, which was taken in this case upon proper notice and in proper form.

Mr. Redding—This testimony was taken for a former trial and has been once offered in evidence and read I do not think it would be competent to read it any more than it would to read the testimony of one of the witnesses taken at the former trial by the shorthand reporter.

The Court—Does not a deposition last until the case is disposed of?

Mr. Redding—I would ask for an instruction from the Court on that point.

The Court—I think it does.

Mr. Redding—Then I have no objection to its being read.

(Mr. Lezinsky starts in to read the deposition.)

Mr. Redding—With the consent of counsel, I will enter a formal objection to the deposition being read a second time on the second trial. I should like to enter the objection to this deposition being read at this time, having been read at a former trial.

The Court—I overrule the objection.

Mr. Redding—Note an exception.

(Mr. Lezinsky continues reading.)

“ Q. Do you know anything about any message from Mr. Pauson to the railroad agent concerning the sleeping car ticket before he went to the station?”

Mr. Foulds—I object to it as leading, incompetent, irrelevant, and immaterial.

The Court—I overrule the objection.

Mr. Redding—Exception.

* * * *

“ Q. State what you know about such matter?”

Mr. Foulds—I object to it as irrelevant and immaterial.”

The Court—Same ruling.

Mr. Redding—Exception.

* * * *

“Mr. Foulds—I move to strike out the answer as not responsive to the question and as hearsay.”

The Court—(After argument.) The motion to strike out is denied.

Mr. Redding—Exception.

“ Q. Was this depot the one belonging to the Northern Pacific Railroad Company at Seattle, and from which the trains of that company leave?”

(Objected to as leading, objection withdrawn.)

* * * *

“Q. Did they at the time have any other depot at Seattle?”

(Objected to as leading, objection withdrawn.)

(Mr. Redding reads cross-examination.)

(Plaintiff rests.)

Thereupon the defendant moved the Court for an instruction to the jury to find a verdict for the defendant upon the evidence introduced by the plaintiff, which motion and instruction, after argument, the Court denied, to which ruling the defendant duly accepted.

Testimony of J. W. Stamper,

Called for the defendant—sworn:

Mr. Redding:

Q. Mr. Stamper, what is your name, and where is your residence, and what is your occupation?

A. J. W. Stamper is the name. My residence is in Tacoma, Washington. My occupation is that of passenger conductor on the Northern Pacific Railroad.

Q. How long have you been in the employ of that company?

A. I entered the employ in June, 1890.

Q. Have you been in the employ of the company ever since down to the present time? A. Yes, sir.

Q. Do you know the plaintiff in this case, Mr. Pauson?

A. I have met Mr. Pauson, and know the gentleman who had been designated or pointed out to me as Mr. Pauson, yes, sir. I have no personal acquaintance with him.

Q. Were you the conductor on a passenger train of the Northern Pacific Railroad Company which left

Seattle on the night of the 6th of September or 7th, 1892? A. The 6th, yes, sir.

Q. September the 6th? A. I was.

Q. Will you state what occurred on that passenger train with reference to the plaintiff and with reference to his ticket, and in as few words as you can, tell the jury exactly what happened that evening on that train in connection with Mr. Pauson and that ticket?

A. In taking up the transportation on the train I found Mr. Pauson aboard the sleeper occupying a berth. He presented me the return portion of a round trip ticket, reading, "From Seattle to Portland." I examined the ticket, told Mr. Pauson I could not honor the ticket. He asked me for what reason. I told him that it was not properly witnessed or endorsed by the agent at Seattle, as was required to make it valid for return passage. Mr. Pauson explained to me that he was the original purchaser of the ticket, and that he had presented the ticket to have it stamped and witnessed for return passage, and that if it were not properly endorsed it was no fault of his. To which I replied that it was not my business to place the responsibility of the error or mistake, but I could only accept the ticket as it showed to be, and as it was not in proper shape, I could not endorse it, or accept it, I should say. He repeated again, if I remember rightly, that he had presented it, and that it was no fault of his. I told him I could not help that, that there was only one line of action for me to pursue so long as the line of transportation was not regular, and I could not honor it. He says, "Very well, it is no

fault of mine if it is not regular, and I cannot do anything more to make it regular." I told Mr. Pauson that I could help him out of the predicament in which we were found, and if he would deposit it with me, the amount of the fare from Seattle to Tacoma, that when we reached Tacoma, I would go with him to our station agent there, and have him endorse or stamp and witness the ticket, and that I would make him a refund of the amount of the fare between Seattle and Tacoma, which was \$1.35. To which he replied, "No, it is no fault of mine if the ticket is not right, and I don't propose to do anything more to make it right; if you cannot honor the ticket you can put me off the train." I says, "Very well; if that is your final decision, you can make your arrangements to get off at the next stop, which will be Kent."

Q. Where did this conversation that you have just related, occur?

A. Well, it occurred—I cannot give the exact location or spot, but it was just after we had left Seattle, probably out 10 or 12 miles from Seattle.

Q. How far is it from Seattle to Kent?

A. It is 16 miles.

Q. And how long is the run in minutes?

A. On that run, if I remember right, it is about a 35-minute run, I believe—something near that.

Q. Where did this conversation occur with reference to the position of yourself and Mr. Pauson in the car?

A. Mr. Pauson was in his berth in the car, and I was standing immediately in front of the berth with the curtain back somewhat, talking to him through the opening in the curtain.

Q. Was anybody else present? A. No, sir.

Q. What tone of voice were you using?

A. Just an ordinary conversational tone, just as I am talking now, I presume.

Q. Please proceed and state what further occurred?

A. I told him if that was his final decision he could make his arrangements to get off at Kent. I proceeded then to take up the balance of the transportation in the car, and paid no more attention to Mr. Pauson until about the time we arrived at Kent. Then I went into the car again where he was, and he was up and partially dressed and I announced to him that this was the station at which he would have to get off. He says, "I will be ready in a few moments, or few minutes,"—something to that effect, and I waited not more than a minute or couple of minutes—not more than a couple of minutes, I think, when he finished dressing, and putting his things in a valise that he wanted to put in, and when he finished this he said, "Conductor, I am ready." I picked up his valise and preceded him out of the car. He followed out on to the platform of the sleeper, and when he reached the platform he stopped and remarked, "Conductor, I will not walk off here. You will have to force me off." I replied, I guess he would not be very hard to force off; and he said, no. With that I stepped in behind him, or rather to the side, a little bit to the rear of him and took hold of his arm, as I would of any passenger, or a lady, to assist them from a train. He preceded me down the steps of the sleeper until he had reached the lower step. Upon reaching there he looked out around, out there, kind

of taking in the situation, and he said: "I dislike the idea of stopping here to-night." I says, "Well, Mr. Pauson, I dislike the idea of leaving you here, but if you will persist in refusing to comply with the proposition I have made, there is nothing else for me to do. I cannot honor the ticket in the shape it is in." He says "Very well, I will give you the fare." He put his hand in his pocket and gave me a twenty-dollar gold piece and turned around and went back into the sleeper. I spoke to one of the brakemen and told him to return the valise to the sleeper and he did so, and I preceded the brakeman into the sleeper, I think, after giving him instructions to take the valise in, and I told Mr. Pauson then that I had not sufficient change for the money, but I would get it for him in a few moments and give him the change. He replied to this that it did not make any difference as I was going to make a refund anyway when I got to Tacoma—just to keep it until I got to Tacoma. This I did, and Mr. Pauson and I had some other conversation there—I do not pretend to say that I remember it all, but I remember that he asked me if I knew the boys at Seattle who were in charge of his business there. I told him I was slightly acquainted with some of them; that I had patronized his store to some extent, and knew Mr. Redelsheimer, the manager, slightly, and he said, "Well, when you go back on your return trip, if it is not too much out of your way, or if convenient for you, I wish you would go in and tell the boys about this little occurrence," and he remarked also that he did not entertain any ill feeling—he realized the position in which I was placed, and

he considered I was simply performing my duties. That, I believe, is all the conversation until we reached Tacoma, the end of my run. When we arrived at the station there, I went back to the sleeper to accompany Mr. Pauson to the ticket office, and we walked over to the ticket office, and he says, "Conductor, I guess you can take out the amount of your fare between Seattle and here. I will buy another ticket through to Portland, and not use this one at all." I says, "Very well; if you want me to do so, I will," but I says, "It is entirely unnecessary as the ticket can be fixed up here all right, and I will give you a refund of the money, and cancel the ticket for my portion of the run, and it will be good for the return portion." He says, "No; take out the amount of your fare and I will not use the ticket at all." We then went into the ticket office and I got change for the money from the ticket agent in the office and retained my \$1.35, and gave him the change with a receipt and rebate for 25 cents. I then left Mr. Pauson.

Q. What was the condition of Mr. Pauson with reference to his being excited or otherwise, when you had this conversation with him in the car, after you returned to the sleeper?

A. I did not notice any signs of excitement or anything of the kind.

Q. At any time did you lay hands on Mr. Pauson, in any way?

A. Except as I told you that I took him by the arm on the platform and he preceded me down to the lower step of the sleeper. That is the only time I laid any hands on him at all.

Q. Did you use any force at all, of any kind, in doing that? A. No, sir.

Q. Did Mr. Pauson leave the car and get onto the platform of the depot? A. No, sir.

Q. How large a place is the town of Kent?

A. Well, it is a town of I should say from 1000 to 1500 inhabitants.

Q. Do you know whether there are any hotels there or not? A. There are; yes, sir.

Q. How many to your knowledge?

A. There are three.

Q. Is that the ticket that was presented by him (handing ticket to witness.) A. Yes, sir.

Q. Was this portion attached at that time or detached? A. This portion?

Q. Yes, sir.

A. It was attached to the lower end of the ticket in that form (illustrating.)

Mr. Redding—Gentlemen of the Jury, I will pass that for your inspection.

A. A Juror.

Q. This ticket is in the usual form, is it not, that is used for this passage?

A. This is one of the forms; yes, sir. There are different forms of tickets that are used between those two points, but this is one particular form of ticket.

Q. (Mr. Redding)—Will you state to the Court and Jury what class of ticket that is?

A. It is what is termed a tourist's ticket; it is a limited first-class ticket.

Q. (The Court)—What do you mean by a limited first-class ticket?

A. I mean that there is a time limited in which the ticket shall be used.

Q. (Mr. Redding)—Do you remember any other conversation of any kind, and if so—

Q. (The Court)—Is that sold for the same or a lower price than the regular ticket?

A. It is sold at a reduced rate, that is, at a reduction from the first-class unlimited. There is what is called first-class unlimited rate and this is sold at a reduced rate.

Q. What is the first-class rate?

A. I believe the first-class from Portland to Seattle is \$7. However, I am not positive about that.

The Court—I will withdraw the question.

Mr. Redding—I will prove that by the agent of the company.

The Witness—The conductor is only furnished with the rates over his own division, and my division did not extend to those points, consequently I don't know what it is.

Q. State, if you please, what other conversation occurred between Mr. Pauson and yourself, if any, upon the platform of the car, or at any time during this event, or this night. I will put the question differently. Did Mr. Pauson make any inquiry of you with reference to his staying at Kent that night?

A. No, he made no inquiry. As I stated before he remarked after descending to the lower step of the sleeper and kind of making a survey out there as it was, that he disliked the idea of stopping there.

Q. Did you use any vulgar language to Mr. Pauson during this occurrence, of any kind or any nature?

A. No, sir, none whatever.

Q. Did any one else besides yourself, during this occurrence, lay his hand upon Mr. Pauson?

A. No, sir.

Q. Are you furnished by the railroad company with any rules or regulations in print for your guidance with reference to taking up tickets and performing your duties as conductor? A. Yes, sir.

Q. Have you a set of those rules with you?

A. I have not.

Q. Look at those, and see if those are your rules?

A. (After examining) Yes.

Q. Is that a copy of the rules furnished you?

A. Yes, sir.

Mr. Redding—The defendant offers in evidence the printed rules and regulations of the Northern Pacific Railroad Company to ticket agents and conductors, taking effect March 1st, 1891.

Mr. Lezinsky—We object to that as immaterial and irrelevant.

The Court—Is it necessary to offer any more than the rule that regulates this particular transaction?

Mr. Redding—No, sir. I will ask that they be excepted from it and offered. I did not know but what I had better offer all the rules at first.

Q. I will ask the conductor to point out the rules that guided him in this instance, and I will offer those.

A. I am not able to locate them by number, and it may take some little time in searching through here to find them.

The Court—I suppose they will explain themselves.

Mr. Redding—I will simply offer those portions and will read them hereafter, which refer to the duties of a conductor on such an occasion as this, and I will ask that those excerpts be marked Defendant's Exhibit "A" when taken out. I will offer those later.

Q. Was Mr. Pauson injured in any way by this transaction to your knowledge? A. No, sir.

Q. Was he maimed or hurt so that he could not travel?

The Court—It is not claimed that he was.

Mr. Lezinsky—It is not so claimed.

Mr. Redding—I understand that they virtually admit that.

Q. Do you know of anything else Mr. Stamper that transpired at this time, and on this occasion, and if so, please state it to the jury.

A. I think I have stated the transaction about in full.

CROSS-EXAMINATION.

Mr. Lezinsky:

Q. Mr. Stamper, with the exception of the counsel in this case, with whom have you discussed your testimony that you would give in this case?

A. With whom have I discussed the testimony?

Q. Yes, sir, the testimony that you were going to give in this case.

A. I have not discussed the testimony that I was going to give with any one.

Q. Not with any person at all? A. No, sir.

Q. Is it not a fact, Mr. Stamper, that you made a written statement of your testimony in this case, or the attorney?

A. I made a written statement to my superintendent at the time of the occurrence, or shortly thereafter—the next day, I think it was, after the occurrence at Kent.

Q. Do you know Mr. Nadeau?

A. Yes, sir, I know three Mr. Nadeaus. I know three gentlemen by that name.

Q. Do you know Mr. Nadeau who is the ticket agent at Seattle? A. Yes, sir.

Q. Who was on the 6th of September, 1892?

A. Yes, sir.

Q. Do you know Mr. Babcock, who was one of the brakemen on that train? A. Yes, sir.

Q. Do you know Mr. Crummy, who was one of the brakemen on that train? A. Yes, sir.

Q. Do you remember the trial of this case some time in August of this year? A. Yes, sir.

Q. Is it not a fact that just prior to that case, some few days or some time just prior to the trial of that case, that yourself and Mr. Nadeau and Mr. Crummy and Mr. Babcock were in the rooms that one of you occupied on Market street, and there your statements were read over amongst all of you? A. Yes, sir.

Q. Is not that a fact? A. Yes, sir.

Q. You had your statement that you had made in that case? A. Yes, sir.

Q. And you read it to all of these gentlemen; is not that a fact?

A. Yes, sir; I believe it is.

Q. And that was then discussed between all of you—the case was?

A. It was not discussed as to what the evidence would be any more than the reading of the original statements.

Q. You talked the whole matter over amongst yourselves; is not that a fact?

A. I presume there was some discussion with reference to the case, yes, sir. No discussion except the statements showed for themselves as to what the statements were in the first place—that is, the original reports.

Q. Were not these statements written out on typewriting paper? A. No, sir; they were not.

Mr. Redding—Those were written out in my office.

Mr. Lezinsky—Never mind.

The Court—Let him ask the witness.

Q. (Mr. Lezinsky)—Is it not a fact that these statements which were read over there, were written out in typewriting on legal cap paper?

A. No, sir; those I think, were the original statements, as I say we had made them to our division superintendent; that is my recollection of it.

Q. Do you know that there were some statements of this testimony that were written out in the office of Mr. Redding in typewriting on white paper?

A. When we were here before we were in Mr. Redding's office, and he questioned us as to what we knew of the case—what our testimony would be—and he made a record of it, I guess.

Q. On the typewriter? A. Yes, sir.

Q. Are not those records the matter that was read over at that room?

A. No, sir; the records that were read over were the statements as they were originally made or reported to our superintendent.

Q. Those records, you say, were never read over at that place—are you positive of that?

A. Yes, sir.

Q. Did you ever read that statement over with any of these gentlemen at any other time?

A. No, sir.

Q. Did you ever have it in your possession at all?

A. I had my own.

Q. Where? A. Here, in San Francisco.

Q. Was anybody else present at the time?

A. There were others present, yes, sir.

Q. Did you read it aloud?

A. No, sir, I did not.

Q. Mr. Stamper, is it a fact that your instructions from your company are, or your instructions were on the 6th day of September, 1892, at the time this transaction took place, from the Northern Pacific Railroad Company, which was your employer, that in all cases where a ticket such as this was presented, that you could not under any circumstances receive that ticket for passage?

A. Not under any circumstances.

Q. Not under any circumstances?

A. There is a rule which provides for the correction of errors of that kind in the book of rules.

Q. Did it give you the discretion and right to correct any errors of that kind?

A. It gave me the authority to have it corrected by an agent. It did not give me the authority to correct it myself.

Q. It did not give you the authority to correct it.

A. No, sir.

Q. Were your instructions from the company at that time that when a ticket of this kind was presented, that you could refuse it for passage?

A. Yes, sir.

Q. No matter what explanation was given of the ticket—that you should refuse it for passage when it was presented? A. Yes, sir.

Q. That even if this ticket had been presented by Mr. Pauson to the ticket agent at Seattle, and if for any reason he had failed to stamp and sign the ticket on the back, that you should refuse it for passage?

A. I had no authority to accept it with any explanation.

Q. With any explanation at all? A. No, sir.

Q. Your instructions in such cases were to demand fare from the passenger? A. Yes, sir.

Q. And then your further instructions were that if the passenger failed to pay his fare, that you should eject him from the train as you would any other passenger who was upon the train and had failed and refused to pay fare? A. Yes, sir.

Q. Those were your instructions, were they not, with the further directions not under any circumstances to deviate from those instructions?

A. I was not to deviate in them except as I have explained—the authority that it were corrected by some other agent.

Q. Unless it was corrected by some other agent so that you could receive it? I mean the ticket in the form it was then in, those were your instructions?

A. Yes, sir.

Q. And it was your instructions not to deviate from those under any circumstances?

A. Yes, sir.

Q. Then it was a fact, was it not, that you had no authority to take a deposit of fare from a passenger, was not that a fact?

A. No, sir; I had the right to take a deposit or to collect the fare from the gentleman with the understanding that I would make him a refund of it if the ticket was made right at Tacoma.

Q. He had to pay that fare to you, that is what he had to do?

A. Yes, sir, that is what I asked him to do, was to deposit the amount of the fare with me.

Q. You had asked him to pay it to you, did you not?

A. Deposit is the word I think I used, but I don't see the difference between paying it and depositing it with the understanding that it was to be refunded, but deposit is the word I think I used.

Q. But you are not sure of that?

A. I am quite positive of it.

Q. Quite positive? A. Yes, sir.

Q. Were you satisfied of the fact that the person who presented that ticket was Mr. Pauson, and that he was the purchaser and holder of that ticket?

A. Yes, sir.

Q. You were satisfied of that from the beginning, were you?

A. Yes, sir, I didn't raise that point at all.

Q. You didn't raise that point? A. No.

Q. Did you also believe his statement that the matter was not any fault of his, but the fault of the agent? A. Yes, sir.

Q. You also believed that statement?

A. And since you mention it, I believe I told Mr. Pauson that I did not question his statement.

Q. You did at that time?

A. Yes, sir; since you call it to my mind, I believe I told Mr. Pauson that I did not question his statement.

Q. As a matter of fact, did you believe that the statement he made to you was true?

A. Yes, sir; I had no right to question it at all, as I told him.

Q. Will you state why it was, if you believed that Mr. Pauson was the original purchaser of that ticket, that he had signed this ticket in the office before the agent, and that it was a neglect of the agent at Seattle to stamp and sign that ticket, you did not permit Mr. Pauson to remain in his berth, and yourself take that ticket to the agent at Tacoma when you got to Tacoma, and have the ticket stamped there, so that Mr. Pauson could ride on it without threatening to put him off or ejecting him off, or compelling him to get up and dress and get off the train?

A. Simply because the agent at Tacoma would have no authority to sign the ticket on my word. It would be required that he had to witness the ticket personally.

Q. If you were satisfied that Mr. Pauson was the original purchaser of that ticket and had signed in the presence of the agent at Seattle, why was it that you

did not permit Mr. Pauson to ride upon the train without demanding fare from him, and ask him to have the ticket witnessed by the agent at Tacoma?

A. I had no authority to do that. Mr. Pauson might have ridden to Tacoma and then he might have refused to get up and have the ticket endorsed. Then I would have no recourse for getting the fare from Tacoma to Seattle.

Q. So the fact of the matter is, you refused to allow him to ride to Tacoma unless he paid fare; is not that the fact of the matter?

A. Unless he deposited the fare.

Q. Unless he paid fare; is not that the fact?

A. Yes, sir, with the understanding that it be refunded.

Q. You say that he did tell you that this fare would be paid with the understanding that it would be refunded? A. I told him.

Q. You told him that?

A. Yes, sir; if he would make the deposit of the fare, I would make the refund of the money at Tacoma, in the event that he satisfied the agent of his identity, and the ticket was properly witnessed and stamped by that agent.

Q. Is it not a fact, Mr. Stamper, that you did not say anything to Mr. Pauson about the fact that you did not question his statement until after Mr. Pauson had been put off the car, or after he had gone out, until after the first part of the transaction had taken place, and he had come back into the car, and he had paid his fare?

A. No, sir, I think the conversation took place at the berth before he left the car.

Q. Would you be sure of that?

A. I am quite positive of it.

Q. You are quite positive that you told him that you did not question his statement before you left the car or before Mr. Pauson left the car the first time?

A. Yes, sir.

Q. I will ask you if it is not a fact that that conversation only took place after Mr. Pauson returned to the car?

A. I have just stated that it is my recollection that it took place before we left the car.

Q. Did you have such a conversation after Mr. Pauson returned to the car? A. No, sir.

Q. Don't recollect any such conversation after he returned to the car? A. No, sir.

Q. Is it not a fact that after Mr. Pauson returned to the car, the only conversation that took place in regard to your making any mention of this matter, was that Mr. Pauson stated to you, "you tell my people in Seattle what happened to me when you get there. If you see my people you tell them what happened to me."

A. Well, we had some little conversation after we returned to the car, but it is a good long while since, and as I considered at the time, it was not of much importance, so it did not impress itself upon my mind very strongly, and it is pretty hard to say positively just what conversation was had, but my recollection is that about all the conversation—in fact, all that I recollect, is that Mr. Pauson remarked as I stated before, that he realized that I was performing my duties, and he did not entertain any ill feeling towards me, and he then asked me if I knew men at Seattle,

and requested if it were not too much inconvenience, that I tell them of the occurrence upon my return to Seattle.

Q. Is it not a fact, Mr. Stamper, that at this station at Kent, when Mr. Pauson was put off the car, that there were no lights there at all—the place was in perfect darkness?

A. I think there were no lights at the station.

Q. Did you see any other lights there at all?

A. I do not remember whether I saw any other on this particular night or not. I am quite sure though, there were no lights at the station.

Q. Is the station some distance from the town proper?

A. No, the station is very near the central part of the town.

Q. Is it a fact Mr. Stamper that Mr. Pauson was asleep when you came to collect his fare the first time?

A. I do not remember about that—that is, I do not remember so that I could be quite positive about it. However, I do not believe that he was asleep. If I recollect rightly I just opened the curtain a little, and called into the berth for the ticket.

Q. From what portion of the car did you come, from the forward end or back end of the car?

A. From the forward end.

Q. That is from the engine?

A. Yes, sir, from the end nearest the engine.

Q. Can you state about how many berths there were on each side of this car?

A. Well, I cannot state positively.

Q. You know about how many berths?

A. It is what they term a 12 or 14 section car I presume—something near that, but I could not say positively, but it is my opinion that it is either a 12 or a 14 section car.

Q. Does that mean that there are 12 or 14 sections on each car?

A. That means there are 7 berths on each side.

Q. That is 7 sections on each side? A. Yes, sir.

Q. An upper and lower berth to each section?

A. Yes, sir.

Q. Is it not a fact that upon this occasion all of the lower berths of that car were taken on this night?

A. I don't think so.

Q. Is it not a fact that Mr. Pauson occupied an upper berth?

A. I think Mr. Pauson was in a lower berth; I would not be quite positive, but I think he was in a lower berth.

Q. You say you are quite positive of that?

A. No; I say I would not be quite positive, but it is my recollection that he occupied a lower berth.

Q. Will you just bring your recollection, as nearly as you can, to that matter?

A. I could not be positive upon that point either way—that is, absolutely positive, but to the best of my recollection, Mr. Pauson was in the lower berth.

Q. Can you state the reason why Mr. Stamper, all of those other matters are vivid in your mind, as to just how far Mr. Pauson went, and whether he took his satchel or you took his satchel, and whether you preceded him, or went behind him, and you cannot tell whether Mr. Pauson was in an upper or lower berth?

A. Those were the points which I considered the important ones in the case. Those are the points of which record was made in the report to the officials. Other points that I considered of minor importance we made no mention of in making a report, and consequently they are not so strongly impressed upon the mind as the more important ones.

Q. Do you recollect whether or not—there were other people in this car besides Mr. Pauson, however?

A. Yes, sir; there were some.

Q. The car was pretty well filled, was it not?

A. It is my recollection that we had rather a light train that night—that there were not very many in it.

Q. Your recollection is that there were not very many in this car? A. Yes, sir.

Q. Berth 6 would be about the middle of that car, would it not, or Section 6?

A. Yes, sir; very nearly the middle.

Q. It would be nearly about the middle.

A. Yes, sir.

Q. Therefore, coming from the front of the car, you would have taken up the fares or collected the tickets of about half the people who were in that car before you got to Mr. Pauson's place?

A. If they occupied the front end of the car.

Q. If they occupied the front end of the car?

A. Yes, sir.

Q. This train was a local train which left Seattle, was it not; it ends its journey at Seattle?

A. Yes, sir.

Q. It did not come from any other point?

A. Yes, sir; Seattle was the starting point.

Q. So that all of the tickets of those passengers who were in that car, were collected at the same time that Mr. Pauson's ticket was collected?

A. They were collected in succession as I would come in.

Q. You were going through the car to collect the tickets from all of the passengers who were in that car?

A. Yes, sir.

Q. And therefore you would certainly have awakened all the people who were in the car, if there were any, before you got to Mr. Pauson?

A. Yes, sir; if there were any occupying the berths ahead of me, of course I would have awakened them.

Q. Do you recollect whether or not on this occasion all of the people were awake, or they were all asleep, or about what the general condition was as to whether they were asleep or not—the people in that car at that time?

A. My recollection is that everybody was in their berths, but as to whether they were asleep or not, I cannot tell.

Q. Do you think they were nearly all of them awake? A. I cannot remember.

Q. Is it not usual that about this time, when you come around to get the tickets, pretty nearly everybody is awake?

A. I do not know that that is usual. Very often people buy their berths early in the evening and go and get aboard the car and retire early, and possibly are asleep by this time. At other times no one would take the train until just about the time it is ready to

leave, in which event it is not likely they would be sleep.

A. You are familiar with what is known as Pullman car checks, are you not?

A. No, sir, don't have anything to do with them.

Q. Don't you know anything about them?

A. I know something about them, yes, sir.

Q. How long have you been a railroad man?

A. About thirteen years.

Q. How long have you been a conductor taking up fares in Pullman cars?

A. I have been a conductor on a passenger train about four years, or four years and a half next March.

Q. In which Pullmans are operated?

A. Yes sir, but the conductor does not take up these checks. The Pullman conductor or porter takes those up.

Q. That is, he takes up the tickets and issues these checks? A. Yes, sir.

Q. You know enough of railroad matters to know for what berth that calls for; I will ask you if it does not call for the upper berth of section 6?

A. Yes sir, this ticket as marked, I should think is for number 6.

Mr. Redding—The check is the best evidence it seems to me.

The Witness—I should think that that means number 6.

Q. (Mr. Lezinsky)—The upper berth of number 6?

A. Yes, sir; that is what I should think the check means, although I never handle those checks at all.

Q. Do you not know Mr. Stamper, that it is a rule of the Pullman Car Company or of the railroad agents,

who act as agents also of the Pullman Car Company, that they will not issue Pullman car tickets or tickets entitling people to Pullman car accommodations unless they have the proper railroad transportation?

Mr. Redding—We object to that as not proper cross-examination, not the best evidence, and immaterial, irrelevant, and incompetent.

The Court—I think it is competent because the conduct of the conductor is under consideration.

Mr. Redding—I withdraw the objection.

The Court—Proceed.

A. What was the question?

(Question read.)

A. (Continued)—I know nothing of the rules of the Pullman Car Company, or that govern their agents.

Q. (Mr. Lezinsky)—Don't you know that that is the general custom in the matter of the issuance of Pullman car accommodations?

A. I know from a general understanding that it is. However, of my own personal knowledge I know nothing of the rules.

Q. You know from general understanding, that a man cannot get Pullman car accommodations unless he shows that he has got proper railroad accommodations between the points that he wants Pullman accommodations?

Mr. Redding—I do not see how this is proper cross-examination, and it is according to the opinion of the witness about rules exterior to his own rules.

The Court—It is some evidence to explain his conduct, and the objection is overruled.

Mr. Redding—Exception.

Q. (Lezinsky)—Did you not have that understanding about that general matter?

A. Yes, I say that is my general understanding, but as to rules, I don't know whether that is an imperative rule or not.

Q. Did you see this Pullman check at the time you saw Mr. Pauson's ticket, or did you see the Pullman ticket that he had, as you remember?

A. I don't think I saw either.

Q. You don't think that you saw either?

A. No, sir.

Q. Do you know whether or not the Pullman conductor had been through that car and taken up the Pullman tickets prior to the time that you went through the car or not?

A. I do not; but I do not suppose suppositions go, though.

Q. What is that?

A. I do not suppose suppositions go, but I was going to say it would be a natural supposition that they had taken up the tickets, as they were in the berth.

Q. That is done immediately?

A. It is usually done before they are assigned to their berths.

Q. Your finding Mr. Pauson in his berth, there was an assurance to you that he had proper Pullman accommodations on that train?

Mr. Redding—We object to that as not proper cross-examination, and calling for the opinion of the witness as to matters exterior to his employment, and not anything with reference to the direct cause.

The Court—It is all with reference to what influenced his conduct. I overrule the objection.

Mr. Redding—Exception.

A. (After question read.) I did not give that matter a consideration at all. It was a matter with which I had nothing to do.

Q. (Mr. Lezinsky)—Do you know by whom the Pullman accommodations or Pullman tickets are issued at Seattle; is it not a fact that they are issued on behalf of the Pullman Car Company by the agents of the Northern Pacific Railroad Company?

(Same objection, ruling and exception.)

A. I believe they are, yes sir.

Q. You say that when you came back after Mr. Pauson had refused to pay fare to you and the train arrived at Kent, Mr. Pauson had not yet finished dressing?

A. Hardly. He was just finishing dressing.

Q. Is it not a fact that you then told him that the train was at this station now, and he would have to get off?

A. Yes, sir, or words to that effect.

Q. You used words to that effect to him at that time?

A. Yes, sir.

Q. And is it not a fact that he then said that he would be dressed in a minute?

A. Yes, sir.

Q. Then he finished his dressing?

A. Yes, sir.

Q. Then, is it not a fact that you told him, "Now, you will have to get off at this station; you will have to get off here." When he finished dressing you told him that again?

A. When he had finished dressing and put some articles in his valise, as I remember, he said simply, "Conductor, I am ready," at which I picked up the valise and preceded him out of the car, as I have stated.

Q. Is it not a fact that you asked Mr. Pauson if he had any baggage, and he told you that it was under the seat

A. No.

Q. That is not the fact?

A. I don't think so.

Q. Is it not a fact that when you told Mr. Pauson, "You will have to get off here," Mr. Pauson said, "Well, but I don't want to get off; I desire to ride."

A. At this station do you mean?

Q. Yes, sir, at this station?

A. No, sir.

Q. He did not say anything of the kind?

A. No, sir, except as I relate, when he went out on the step and stopped, then he said—

Q. I am asking before you went out of the car at all, is it not a fact that Mr. Pauson told you that he did not desire to get off, and he would not get off?

A. No, sir. After he had finished dressing, he said just as I have stated, "Conductor, I am ready."

Q. Is it not a fact that thereupon you told Mr. Pauson he would have to get off, and he said he would not go, and then you said, "Well, I will have to put you off?"

A. No, sir.

Q. And then he said, "Well, you certainly will have to put me off, because I will not get off voluntarily," or words to that effect?

A. No, no such conversation as that occurred in the car.

Q. And is it not a fact that you then told Mr. Pauson that you guessed you could do that easy enough—you could put him off?

A. No, sir; the only words that were said with reference to putting him off, was what he said when I first told him that I could not honor that ticket—that if I could not honor the ticket I would have to put him off, and then the next thing that was said about putting him off was after he had followed me on to the platform of the sleeper at the station where he stopped again and said, “I will not walk off of here; you will have to force me off.” Then I says, “I presume you won’t be hard to force off,” to which he replied, “No.”

Q. I am simply confining this question, Mr. Stamper, to what took place before Mr. Pauson moved away from his berth at all, or moved towards the door of that car?

A. After he was up and dressed, you mean?

Q. After he was up and dressed. Is it not a fact that you then told him that you could do that easy enough—you could put him off of the car?

A. No, sir.

Q. And is it not a fact that you thereupon took hold of Mr. Pauson’s arm, and took up his satchel and led him out of the car?

A. No, sir.

Q. Do you say that nobody had hold of Mr. Pauson at all while he was going out of the car?

A. No, sir; I say there was no one.

Q. That there was no one that had hold of him while he was going out of that car?

A. Yes, sir.

Q. Where were you when he was going out of that car?

A. I had preceded him out of the car.

Q. You walked ahead?

A. He followed me, yes, sir.

Q. Could you state how far ahead of him you were?

A. Well, it was a very short distance—probably not over 4 or 5 feet—something like that—about as one passenger would ordinarily follow another out of a car, unless there was a jam in the car.

Q. And you say you had his valise packing it off?

A. Yes, sir.

Q. Did you continue in that position until you got to the platform of the car—what I mean is the platform of the car, which is on a level with the floor of the car?

A. Yes, sir, I preceded him out on to the platform.

Q. Did you stop when you got to the platform?

A. I walked down on to the station platform.

Q. And did Mr. Pauson follow on to the station platform?

A. No, sir, he stopped on the platform of the car.

Q. It was on a level with the floor of the car?

A. Well, very nearly level.

Q. You say he stopped there?

A. Then is when he stopped and remarked that he would not walk off from there—that I would have to force him off.

Q. And you were at that time on the floor of the station—on the platform of the station?

A. I was on the station platform, yes, sir.

Q. You were entirely off of the car?

A. Yes, sir.

Q. And then Mr. Pauson said he was not going to get off? A. Yes, sir.

Q. And you then said to him—what was it that you then said to him?

A. He said that he would not walk off—that I would have to force him off. I said, “I guess you won’t be very hard to force off,” and he replied, “No.” Then I walked up on to the platform—come up on to the platform of the sleeper, where he was standing—walked just a little around him, and took him by the arm, and he preceded me to the lower step of the sleeper.

Q. And you remained behind, and had hold of him until he got to the lower step of the sleeper?

A. Yes, sir.

Q. And you say that then this conversation took place between you, in which he said that he would pay fare? A. Yes, sir.

Q. Is it not a fact, that he asked you as to whether or not there was any place that he could stay there—could stop at this place? A. He did not.

Q. And is it not a fact that you thereupon answered him, “I don’t know and I don’t care a damn”?

A. No, sir, it is not.

Q. And that thereupon Mr. Pauson said, well, he did not want to stay at that place—that he would go on board the train and pay his fare?

A. Yes, sir, that he disliked the idea of stopping there.

Q. Did he use these words, “I dislike the idea of stopping here”?

A. I think those are the words he used—that is my recollection of it.

Q. You do not mean now, do you, Mr. Stamper, to recall the exact words that he used there at that time?

A. I mean to the best of my recollection, and that is the way I give it.

Q. That is the way you give it? A. Yes, sir.

Q. Did you have hold of this satchel all this time?

A. No, sir. When I walked upon the platform to assist him off, I left the satchel on the platform below.

Q. Was he standing upon the step, upon this last step of the car, when he paid you the fare?

A. Yes, sir.

Q. And you were up behind him?

A. I was just a little above him, yes.

Q. And he turned and handed you the fare?

A. Yes, sir.

Q. And you say he handed you a twenty-dollar piece? A. Yes, sir.

Q. And you told him you did not have the change?

A. Yes, sir.

Q. Is it not a fact that that fare was paid inside the car? A. No, sir.

Q. Would you be certain that that fare was not paid inside of the car—that he paid it inside of—

A. I am very certain that he paid me the money before he re-entered the car.

Q. But you told him that you did not have the change, and would give him the change afterwards?

A. Yes, sir, that I would get the change.

Q. You attempted to get the change, didn't you?

A. No, sir.

Q. Didn't you attempt to get the change from the brakeman or anyone else? A. No, sir.

Q. Did you tell him immediately that you didn't have the change, or did you tell him that later?

A. I told him that, I think, immediately on his giving me the money.

Q. About what time of night was it, Mr. Stamper, that you arrived at Kent? It was then pretty nearly 11 o'clock at night, was it?

A. Yes, sir, very nearly that time.

Q. About 11 o'clock at night?

A. From 10:50 to 11, I should say.

Q. And do you remember what time it was when you arrived at Tacoma?

A. My recollection is that our time in Tacoma was 11.50.

Q. Then that would be close on to 12 o'clock at at night—midnight—when you arrived at Tacoma?

A. Yes, pretty near an hour's run from Kent to to Tacoma.

Q. You could only take from Mr. Pauson the fare to Tacoma; is not that a fact? A. That was all.

Q. Because that was the end of your division?

A. Yes, sir.

Q. He could not pay you the fare further, because you could not take the fare to Portland; you were not authorized to take any fare from him beyond Tacoma?

A. No, sir; just up to Tacoma, which was the end of my run.

Q. And he either had to buy a ticket at Tacoma or pay the fare from Tacoma to Portland, to the next conductor who came on board the train?

A. Not necessarily.

Q. Or he had to have a good ticket to present to the conductor of the train?

A. He could have had the ticket fixed which he had in his possession.

Q. He either had to have a good ticket to present to the conductor of the train after it left Tacoma, or he had to pay his fare to the conductor who got on board at Tacoma?

A. Yes, sir.

Q. When you got onto the platform of the station—immediately after you got onto the platform of the station, was anybody else besides Mr. Pauson close to either of you, immediately after you got upon the platform of the station at Kent?

A. The two brakemen were on the station platform. I don't remember exactly the positions they occupied with reference to Mr. Pauson and myself, but they were down on the station platform, not very far from where we were on the train platform—platform of the car.

Q. Did they know anything of this occurrence before this time?

A. I had told one of them, and I don't know but both. I am quite sure I told one of them though to be sure he did not give them a signal to leave this station at Kent until I got ready to go; I expected we would have to leave a man there who was in the sleeper.

Q. How many brakemen did you have on the train, Mr. Stamper? A. Two.

Q. One who is commonly known as the forward brakeman and the other as the hind brakeman?

A. Yes, sir.

Q. That is, the place of one is at the forward end of the train, and the end of the train is the place of the hind brakeman, is not that it?

A. Ordinarily expected to ride on the rear—look out for the rear of the train.

Q. And the position of the other brakeman is up at the head of the train? A. Yes, sir.

Q. How many cars were there ahead of this car on that train? A. I guess there were three.

Q. Three cars ahead; how many were there behind, to your recollection? A. I guess one.

Q. And how far from you was the forward brakeman at the time you got upon the platform of the station at Kent?

A. Well, as I said, I cannot remember their positions with reference to Mr. Pauson and myself, but they were—

Q. State it in fact or car lengths approximately as you can, or as close as you can, give us some idea how near to you immediately when you got on to the station platform the forward brakeman was?

A. He probably was not over a-half a car length away.

Q. Who was the forward brakeman; what was his name—Mr. Babcock?

A. My recollection is Babcock was the forward brakeman at that time.

Q. And Crummy was rear brakeman?

A. Yes, sir; I think that is the way they were working at that time.

Q. How far away from you was Mr. Crummy immediately when you got on the platform of this station at Kent?

A. I think they were both standing there, if I remember correctly, pretty close together on the platform.

Q. Was Mr. Crummy also forward?

A. No, sir; they were both back near the end of the sleeper—that is, near the platform where Mr. Pauson and I were.

Q. You said as I understood you or inferred, that Mr. Babcock was about a half a car length forward from you?

A. Yes, sir; probably not further than that.

Q. That is what you think he was, as near as you can approximate?

A. Yes, sir.

Q. Was Mr. Crummy also forward from you or was he towards the rear end of the train?

A. My recollection is that Mr. Crummy was a little nearer to me than Babcock; for instance, he would stand out in front of us—nearer at right angles than we were standing, or that we were probably standing in that position. I would not be sure whether it was Crummy that stood in front of us, and Babcock in this position, or *vice versa*, but they were both there.

Q. Mr. Babcock, you said, was towards the forward end of the train?

A. I would not be positive that it was Mr. Babcock, but one of them, my recollection is, was a little forward of where we were standing, and probably a half a car length, and the other was a little nearer back, facing where we were.

Q. Was he towards the rear end of the train from you?

A. No, sir; he was towards the head end of the train from me.

Q. He was also towards the forward end of the train? A. Yes, sir.

Q. There were two car lengths between you and the rear end of that train? A. Yes, sir.

Q. When a train stops like that, is it not the duty of the brakeman to stand by the rear end of the train?

A. Not always. If it is stopped for any length of time or if it is stopped for anything other than a regular stop, it is not, but the way they do, the brakemen go through and announce the stations, and assist the passengers in getting off; that is, the rear brakeman, and the head brakeman assists in loading or unloading baggage if there is anything of the kind.

Q. Do you think the other brakeman was about the same length from you—about a half a car length?

A. Probably he was a little nearer.

Q. A little nearer? A. Yes, sir.

Q. Was it immediately when you got on to the station platform at Kent, that Mr. Pauson said, "I will not get off; you will have to use force?"

A. Yes, sir; when he got out on the platform, and I had preceded him out on the platform.

Q. There was no appreciable space of time between the time you got upon the platform of the station at Kent, and Mr. Pauson getting on to the platform of the car, when Mr. Pauson said: "I am not going to get off; you will have to use force." That is a fact?

A. Yes, sir.

Q. And the balance of this occurrence as you stated it, took place immediately after that?

A. Yes, sir.

Q. Did these brakemen maintain about the same relative position during this entire transaction after Mr. Pauson got on the platform, and you on the platform of the station?

A. It is my recollection that they did.

Q. Is it not a fact that when you got to Tacoma you went to the ticket office in order to get that \$20 piece changed in order to give Mr. Pauson the change?

A. When we reached Tacoma I went to the sleeper first in order to get Mr. Pauson to accompany me to the office as I had agreed to do, under the impression that he still intended to have the ticket arranged there, and I to make him the refund as I had proposed to do. When we walked towards the station, then it was that he told me to take out the amount of the fare, that he believed he would not use the original ticket, but would buy another ticket from there to Portland. After I had told him that I would do this if he wished it, we then proceeded into the office, and I got the change for the money from the ticket agent, and gave him the change, the rebate for 25 cents and receipt for the amount of money I had retained.

Q. Mr. Pauson had to get off if this ticket was not fixed up or anything of that kind took place—assuming that to be so—Mr. Pauson had to get off at Tacoma first and get his change from you, and next to buy his ticket to Portland, if he desired to go to Portland?

A. If Mr. Pauson had not wished to go out, and so declared himself, and asked me to get the change for him, I would have tried to have gotten it for him

somewhere before I reached Tacoma. If not, I could probably have gotten it there and taken it to the sleeper to him. I would not have made him get out just for the purpose of coming over and getting his change.

Q. If he was not going to use this ticket to ride to Portland, he either had to get off at Tacoma and buy a ticket or pay some additional fare; he would have had to pay more fare than if he got off at Tacoma and bought his ticket?

A. He would have had to pay in excess of the regular ticket 35 cents, of which he would have got a refund of 25 cents, which would have cost him 10 cents more than the regular ticket rate.

Q. Does he not have to pay 10 per cent more than the regular fare?

A. No, sir; our system is 10 cents, whether it is \$1.00 fare or a \$10 fare. It is a 25-cent rebate, and 10 cents penalty.

Q. Is it not a fact that the only matter about the fixing up of this ticket took place at Tacoma, and what took place at Tacoma, was, you told Mr. Pauson that he might fix this thing up at this office, and Mr. Pauson told you that there was nothing to fix, that you had put him off the train, and there was nothing to fix; all that he had to do was done. I ask you whether or not anything of that kind took place or was said between you; you can just answer it yes or no?

A. No, sir.

Q. Do you mean to say, Mr. Stamper, that this refusal of Mr. Pauson to pay fare, etc., did not ruffle you in any way?

A. No, sir.

- Q. Not a particle? A. No, sir.
 Q. It did not cause you any annoyance?
 A. None whatever.
 Q. You did not get excited a particle about it?
 A. No, sir.

RE-DIRECT EXAMINATION.

Mr. Redding:

Q. Is this your handwriting, Mr. Stamper?

A. Yes, sir.

Q. That is the rebate check?

A. That is the rebate check and receipt.

Mr. Redding—If the Court please, we offer in evidence Rules 15 and 56 of these printed regulations. (Reads.)

Mr. Lezinsky—For what they are worth—we offer no objection.

(They are marked Defendant's Exhibit 1.)

Testimony of W. C. Babcock—Called for defendant, sworn:

Mr. Redding:

Q. What is your occupation and where do you reside?

A. Brakeman on the Northern Pacific Railroad.

Q. Were you in the employ of that company in the month of September, 1892? A. Yes, sir.

Q. Do you know the plaintiff in this action; have you seen him before? A. Yes, sir.

Q. Will you state when and under what circumstances you saw him, and what occurred, if it was upon the night of the 6th of September, 1892?

A. Yes, sir, that was the night. I was brakeman upon the train of that date, and the first that I saw of

the occurrence, was when Mr. Stamper and Mr. Pauson came out of the sleeping-car at Kent, while the train stopped there.

Q. Just state what you saw that took place then, and the position of Mr. Pauson and Mr. Stamper; how they stood and what occurred?

A. Mr. Stamper preceded Mr. Pauson out of the Pullman car, the first I saw of the gentlemen, and Mr. Stamper asked Mr. Pauson what he had concluded to do. Mr. Pauson refused to pay his fare, and Mr. Stamper said he would have to get off the train. Mr. Stamper walked down on to the platform of the station. After Mr. Pauson and Mr. Stamper came on to the platform, Mr. Stamper put his hand upon Mr. Pauson's arm, as I saw it, and they both walked down the steps, Mr. Pauson stopping on the lower step of the platform of the Pullman car, and Mr. Pauson viewed the situation for a moment or two, and as I stated before, Mr. Stamper asked him what he intended to do, and he refused to pay his fare. He looked around, Mr. Pauson, and concluded to pay his fare. He did not like the surroundings at that time of night, and when he concluded to pay his fare—Mr. Stamper had sat his satchel down previous to this conversation—and Mr. Stamper says to me, "Fetch the gentleman's satchel in." After Mr. Pauson complying with Mr. Stamper's request in reference to the fare, Mr. Stamper requested me to pick the satchel up, and I followed the two gentlemen into the sleeping-car. That is all I saw of the transaction or heard.

Q. Did Mr. Pauson get off the lower step of the sleeper on to the platform of the station?

A. He did not.

Q. What did Mr. Pauson do with reference to leaving the lower step of the Pullman car, one way or the other?

A. He agreed to pay his fare, and walked into the car.

CROSS-EXAMINATION.

Mr. Lezinsky:

Q. Mr. Babcock, were you the rear brakeman or the forward brakeman on this train?

A. The forward brakeman.

Q. You were the forward brakeman?

A. Yes, sir.

Q. What was your position—your proper position; where was it your duty to be when the train stopped, as the forward brakeman?

A. Various different positions required of me in my service as a forward brakeman.

Q. When the train made a stop, such as this stop was, where was it your duty to be?

A. Wherever I could render services that were needed.

Q. When this train came to a stop at the station, whom did you see first—Mr. Pauson or Mr. Stamper, the conductor?

A. I stated that Mr. Stamper preceded Mr. Pauson, and that was the first that I had seen of the two gentlemen.

Q. Where was the conductor when you first saw him—where was he standing?

A. He was not standing; he was going out of the Pullman car door.

Q. He was going out of the Pullman car door?

A. Mr. Pauson following him.

Q. Where were you standing when you first saw them?

A. On the depot platform, about opposite the connection of the two cars.

Q. Just about opposite? A. Yes, sir.

Q. About how far from the car—about how far from the step? A. From the step of the car?

Q. Yes, sir.

A. About 6 feet—5 or 6 feet possibly.

Q. About 5 or 6 feet from the car? A. Yes, sir.

Q. And you say you then saw the conductor come out of the car preceding Mr. Pauson?

A. Yes, sir.

Q. Would you state what took place then?

A. The first conversation that I heard was Mr. Stamper asking Mr. Pauson what he had concluded to do. Mr. Pauson said—or he refused to pay his fare, and he says, “You can put me off—I won’t get off,” and Mr. Stamper remarked to him that, “I guess it won’t be a hard matter to put you off, will it?” In answer, Mr. Pauson says, “No, I guess not; you can put me off, but I won’t get off.”

Q. Where was Mr. Pauson standing at this time?

A. Mr. Pauson was following Mr. Stamper down the steps of the platform—the upper platform of the Pullman car.

Q. Where was Mr. Stamper?

A. Just ahead of him.

Q. Where was he standing? Was he on the platform of the car also?

A. Yes, sir.

Q. He was also on the platform of the car?

A. Yes, sir.

Q. Did they both go off of the car then?

A. No, sir.

Q. They did not? A. No, sir.

Q. Where did they stop?

A. Mr. Stamper walked down the steps of the Pullman car, and stood on the depot platform. Mr. Pauson remained on the lower step of the Pullman car. That is where the conversation transpired, and that is the two positions that the gentlemen held during the conversation.

Q. That is during the entire conversation that you speak of—that was the position that these two gentlemen held? A. Yes, sir.

Q. Mr. Pauson standing on the lower step of the car—the last step of the car, and Mr. Stamper on the platform? A. Yes, sir.

The Court—Platform of the car or platform of the station?

A. Mr. Stamper on the platform of the station, and Mr. Pauson on the lower step of the Pullman car.

Q. (Mr. Lezinsky)—While they were coming out of the door and until Mr. Pauson got on to the lower step of the car, and Mr. Stamper on to the platform of the station, did they have any conversation at all?

A. Not that I heard.

Q. Not that you heard? A. No, sir.

Q. Did Mr. Stamper have hold of Mr. Pauson in any way while Mr. Pauson was coming from the platform of the car down to the lower step of the car.

A. He had his hand hold of his arm this way.

Q. He had his hand hold of his arm?

A. Yes, sir.

Q. That is, as they were coming out of the car, Mr. Stamper had his hand on Mr. Pauson's arm?

A. No, sir.

Q. You said they went down the steps, Mr. Stamper preceded Mr. Pauson; that is what you say, is not that so?

A. Yes, sir.

Q. And that Mr. Pauson was behind him?

A. Yes, sir.

Q. You say that Mr. Stamper had his hand on Mr. Pauson's arm while they were coming down?

A. Down the steps, yes sir; but not coming out of the car.

Q. Was Mr. Pauson still behind Mr. Stamper?

A. At what time?

Q. While they were coming down the steps of the car?

A. Yes, sir.

Q. Mr. Pauson was still behind him?

A. Yes, sir.

Q. Then, he had his hand behind him and was reaching back, and taking him down; is that so?

A. Not necessarily, no.

Q. (The Court)—Was that before or after that Mr. Pauson said, "You will have to put me off"?

A. That was before that he had his hand on Mr. Pauson's arm—that was before. Then the transaction transpired after Mr. Stamper had got on the platform of the station, and Mr. Pauson stood on the lower step of the car.

Q. (Mr. Lezinsky)—I do not want to confuse you, Mr. Babcock, and I want you to understand this mat-

ter thoroughly, and so do we, and that is this: you say that before Mr. Pauson got on to the lower step of that car you had heard no conversation between him and the conductor?

A. I made that statement, I believe.

Q. I say you understand that that is your statement?
A. I do, sir; yes, sir.

Q. Then you say that you first saw Mr. Stamper and Mr. Pauson as they were coming out of the door of the car?
A. Is that a question?

Q. Yes.

A. Yes, sir; I made that statement; I saw them at that time.

Q. And Mr. Stamper preceded Mr. Pauson?

A. Yes, sir.

Q. And they continued in that same position without there being anything said, going down the steps of the car and until Mr. Stamper got upon the platform of the railroad station, and Mr. Pauson got upon the lowest step of the car, is that the fact?

A. That is it.

Q. Exactly?
A. Yes, sir.

Q. When they were coming out of the door of the car, did Mr. Stamper have his hand on Mr. Pauson's arm?

A. Mr. Lezinsky, I have answered that twice, and told you that he did not positively.

Q. When did he put his hand on Mr. Pauson's arm?
A. I have answered that.

The Court—Answer it again.

Q. (Mr. Lezinsky)—I will just ask you this question; where were they then when the conductor took hold of Mr. Pauson's arm?

A. After they came out of the door of the Pullman car. That is where I first saw them, as they were coming out of the car.

Q. Were they still on the platform of the car?

A. Certainly they were.

Q. And without anything being said, then Mr. Stamper got hold of Mr. Pauson's arm?

A. Yes, sir.

Q. And then they went off of the car?

A. Mr. Pauson did not leave the car.

Q. They went down the step, as you state?

A. Yes, sir.

Q. Have you discussed the matter of the evidence that would give in this case with any person other than Mr. Redding, the counsel for the defendant?

A. No, sir.

Q. You have not?

A. I have not.

Q. Did you ever read or hear read the statements of Mr. Stamper, Mr. Nadeau and Mr. Crummy and yourself?

A. Yes, sir.

Q. Which were written out in typewriting?

A. Yes, sir.

Q. They were written out in typewriting?

A. Yes, sir.

Q. And were they written out on this legal paper?

A. I don't know what you would term legal paper.

Q. You know that there were statements made by Mr. Stamper, Mr. Crummy and Mr. Nadeau to Mr. Redding in this case which was written out in typewriting?

A. Yes, sir.

Q. And also a statement made by yourself, which was afterwards written out in typewriting by Mr. Redding?

A. Yes, sir.

Q. Did you hear those statements read in a room on Market street at the time that you were down here for the last trial, when you four gentlemen were there present together?

A. No, sir.

Q. Did you hear any of them read at that time?

A. No, sir.

Q. Were there any statements of any kind read there? A. Yes, sir.

Q. What were those statements that were read there?

A. Written statements that were made by each one of the witnesses before we came here for trial.

Q. Were those statements the same as these typewritten statements? A. Yes, sir; nearly so.

Q. Did you make any statement of this matter immediately at the time of the accident to the head office? A. I made a statement in writing.

Q. Immediately at that time? A. Yes, sir.

Q. Or prior to the time of coming down here to the trial?

A. Immediately after this transpired at Kent.

Q. And was that the statement that you read?

A. That is the statement.

Q. Was there any other statement that you read?

A. When?

Q. That was read over at this room on Market street when you were down here for the other trial?

A. No, sir.

Q. There was no other statement read?

A. No, sir.

Q. These statements were read aloud, were they not? A. Yes, sir.

Q. Each one of them was read aloud, and all of you were present there? A. Yes, sir.

Q. Who read them, do you know?

A. Mr. Stamper, I believe.

Testimony of H. P. Nadeau.

Called for defendants—sworn.

Mr. Redding:

Q. Mr. Nadeau, what is your occupation and where do you reside?

A. I reside in Seattle. I am employed as General Agent and Cashier at the depot ticket office in Seattle of the Northern Pacific, Lake Shore and Eastern.

Q. How many offices are there of the Northern Pacific Railroad Company in Seattle? A. Two.

Q. Where is the main office located?

A. Corner of Yesler avenue and Commercial St.?

Q. Is that where you are employed?

A. No, sir, I am employed at the foot of Columbia street, corner of Columbia and West.

Q. That is the depot office, is it?

A. That is the depot.

Q. Do you know Mr. Pauson, the plaintiff in this case? A. I have met the gentleman.

Q. What was the occasion of your meeting him?

A. He purchased a sleeper ticket.

Q. When? A. On the 6th of September, 1892.

Q. Did he exhibit his railroad ticket to you at that time? A. I saw it in his hand, yes, sir.

Q. Did he give it to you? A. No, sir.

Q. In what condition was it when you saw it?

A. Folded, just as a man would carry a ticket in his vest pocket—pocketbook.

Q. What is the size of your ticket selling place—your ticket office inside of the window?

A. I think it is about 3 by 4 feet square, or 4 feet the long way.

Q. Do you remember whether any one else was at the window with Mr. Pauson at the time he purchased his Pullman ticket?

A. I was busy at the time, yes, sir.

Q. What were you doing? A. Selling tickets.

Q. To other people at the window? A. Yes, sir.

Q. Will you state what your movements are in this ticket office when you sell tickets as to your turning around, or leaving your place and turning your head?

A. There is no such movement of turning around unless I am to sell a coupon ticket—a ticket for instance, to San Francisco, St. Paul, Chicago or New York. The local tickets—right on each side of the window is a case which can be reached without moving from my tracks over a foot either way. The Pullman tickets and local tickets—tickets which are ordinarily used for local trains' sale, are in the same case—little compartments by themselves.

Q. Did Mr. Pauson have any conversation with you with reference to his signature of this ticket or to its being witnessed? A. No, sir.

Q. Is there an agent for the purpose of witnessing signatures and for other transactions of the Northern Pacific Railroad Company at the main office in Seattle?

Mr. Lezinsky—I object to that, if your Honor please, as immaterial and irrelevant. This is shown to be a regular ticket office of the company.

ARGUMENT.

Mr. Redding—I will withdraw the question.

Q. What else occurred besides what you have stated with reference to Mr. Pauson's actions at this window?

A. Nothing at all.

Q. Do you know Mr. Redelsheimer?

A. Yes, sir.

Q. Did you see him there?

A. Yes, sir.

Q. How large is the space in this office outside of the window?

A. From the outer wall of the window to the outer wall of the depot is about 6 feet.

Q. I mean where the passengers come in on the outside?

A. That is what I mean; from the outer wall of my window to the outer wall of the depot is about six feet.

Q. Where was Mr. Redelsheimer when Mr. Pauson came to the window?

A. Him and another clerk in the store—I don't know what his name is—was standing off to one side of the window, which is on the outside of the office, which is about two feet from where I was, at the end of a bench.

Q. What were they doing?

A. Standing there in conversation. I think there was another gentleman, a traveling man, with them at the time—either was there, or came up before they left.

CROSS-EXAMINATION.

Mr. Lezinsky:

Q. Did this transaction of Mr. Pauson buying his sleeper ticket make any particular impression on your mind at the time? A. No, sir.

Q. Are you absolutely positive now of that fact, that Mr. Pauson kept that ticket folded in his hand all of the time when he came to that ticket office, on the 6th of September, 1892? A. I am.

Q. And you are also positive of the fact, that Mr. Pauson never signed that ticket upon the shelf of that window? A. Not to my knowledge.

Q. I say, are you positive of that fact; do you recollect that as a circumstance now that is vivid in your memory? A. Very much so.

Q. Do you say positively that Mr. Pauson never put that ticket in your hand at all? A. Yes, sir.

Q. Do you know whether or not that was the ticket that Mr. Pauson presented— A. No, sir.

Q. —at that ticket office at that time?

A. No, I do not.

Q. I will ask you if that was about the size of the ticket as folded, as you state? (Exhibiting ticket folded to the witness.)

A. Yes, sir.

Q. You say that that was about the size?

A. Just about, yes, sir.

Q. Do you state that Mr. Pauson came to the ticket office with a ticket of that character, was it?

A. Yes, sir.

Q. In his hand folded about that size?

A. Just about; either came to the office with it in his hand or took it out of his pocket. When I saw it he had it in his hand.

Q. When you first saw it he had it in his hand?

A. Yes, sir.

Q. Would you state what conversation did take place between you and Mr. Pauson, at that ticket window?

A. He asked if I had a berth reserved for him, and I asked him who he was, and I said I had; the berth had been reserved at the city office—not at my office—gave him his berth ticket and asked him if he had transportation, which I saw in his hand, and I said, "All right," and he went off about his business, and I went about mine.

Q. He said "All right," or you said "All right?"

A. I said "All right," when I saw the transportation in his hand.

Q. Did he pay for the Pullman ticket?

A. Yes, sir, two dollars.

Q. You say that this ticket which Mr. Pauson had in hand, was never handed to you? A. No, sir.

Q. Did you ever take that ticket in your hand at all that Mr. Pauson had in his hand?

A. No, sir.

Q. From any place? A. From any place.

Q. Did you know Mr. Redelsheimer personally on this day? A. No, sir.

Q. Did you know him by sight?

A. I had known him by sight for some time previous to that.

Q. Did you know him by name—you knew that he was Mr. Redelsheimer? A. Yes, sir.

Q. You knew that he was the manager of the firm of Hyams, Pauson & Co. in Seattle?

A. Yes, sir.

Q. And you know that Mr. Stern was associate manager at that time?

A. I did not know what Mr. Stearn's connection with the firm was. I knew he also worked there.

Q. You knew he worked there?

A. That is a light-complexioned, red-headed man; I don't know his name was Stern, or what it is.

Q. Did you know Mr. Pauson by sight prior to that time? A. No, sir.

Q. You did not?

A. I did not know who he was until he asked for the berth.

Q. Were you satisfied that he was Mr. Pauson from his statement that he was Mr. Pauson, or from the fact that he was with these two gentlemen who were connected with his store, that you knew, which was in Seattle?

A. It was immaterial to me whether he was Mr. Pauson or who he was.

Q. Is it not a fact that it is the invariable custom in the matter of selling Pullman accommodations, that the agents of the railroad who sell the Pullman accommodations, must see that the parties who purchase them have proper railroad transportation before they sell them Pullman accommodations?

A. Yes, sir; ordinarily they ask if they have the transportation, if they have the time. I cannot

speak for all agents. If I am busy, I question them and ask them if they have railroad transportation, and they say yes, upon which I sell them the berth.

Q. Is it not a fact that if a person has not proper railroad transportation, that you won't sell him the berth?

A. If they acknowledge they have not got them, yes.

Q. For instance, if a man had a second-class ticket, and he wants to buy a Pullman berth, would you sell it to him?

A. If a man asked me for a Pullman berth and he said he had transportation, I would sell it to him.

Q. If a man had a second-class ticket, would you sell him a first-class Pullman berth?

A. No, sir, I would not.

Q. And unless you were satisfied he had first-class railroad transportation, you would not sell him the Pullman ticket; is not that so? A. Yes, sir.

Q. And, as far as you know, that is the proper way for all railroad agents to act in the matter of the sale of Pullman accommodations; is it not so?

A. I do not know anything about other railroad agents. I can speak for myself only.

Q. How long have you been in the railroad business? A. Six years.

Q. You know, also, what are the customs of other railroad agents?

A. I expect the custom is about the same as my own.

Q. You expect the custom is about the same as your own?

A. I suppose so. I get my rules from the company and live up to them as closely as I can.

Q. Is it not a fact that you have general instructions to that effect; is not that so in the matter of the sale of Pullman accommodations?

A. No, sir, I have never received any instructions at all.

Q. Is it not a thing you learned in learning the railroad business?

A. It is a thing that I learned, yes, sir, but I have not received any instructions, nor seen any.

Q. You knew at this time, did you not, that Mr. Redelsheimer was a man of standing in the community there?

A. I did not know anything about Mr. Redelsheimer, anything more than he was Mr. Redelsheimer, and the manager of Hyams, Pauson & Co.

Q. At that time that firm was the largest firm of the kind in Seattle, was it not?

A. Not to my thinking, I don't think, nor according to others at the time.

Q. Have you ever made a statement of the testimony that you were going to give in this case, to any person other than the counsel in this case?

A. No, sir.

Q. Have you ever made a statement of the facts in connection with this matter—a written statement to the company? A. No, sir.

Q. Did you ever make a statement of it to counsel, which was reduced to writing—a statement of the facts of this case—a statement of the transactions which took place between yourself and Mr. Pauson on the 6th of September, 1892?

A. I wrote a letter to the company about it the day following the transaction.

Q. Did you ever hear the statements that were made by the conductor and brakeman to the company?

A. No, sir.

Q. You say you never heard them?

A. I never heard them, no, sir.

Q. You never heard anybody read them at all?

A. I read them myself.

Q. Where did you read them?

A. I read them in San Francisco.

Q. Where in San Francisco?

A. In my room at the hotel.

Q. Was anybody else present at the time?

A. The brakeman and the conductor.

Q. The brakeman and the conductor?

A. That is the letters that they had written to the company.

Q. Were they read aloud? A. Yes, sir.

Q. Who read them?

A. I think Mr. Stamper, I am not positive.

Q. Then you did hear these statements that these other parties made read?

A. Heard them read?

Q. Yes, sir. A. Yes, sir.

Q. (The Court)—You say it is your usual custom to ask the applicant if he had transportation?

A. Yes, sir.

Q. Do all the tickets require signature?

A. Oh, no. There is only one in a very few. In the round-trip tickets there are a great many which require no signatures. There are different price tickets,

some require signatures and certain duties to be performed, while others do not. Others are simply round-trip tickets sold from Portland to Seattle. There is a ticket which is worth \$12.25. That is a card ticket which requires no stamp or signature or anything, and a person rides back and forth. Then there is a yellow ticket, such as Mr. Pauson had, which requires stamp and signature.

Q. It is not your business to familiarize yourself with any of those things?

A. No, sir, I do not familiarize myself with these things in the least. If they do not fulfill the conditions, it is their own fault. I am usually very busy, and a person generally accommodates himself to the work and not the work to him.

Q. How long was this before the train started?

A. I should judge 20 minutes. I usually go to work at 10 o'clock, and the train leaves at 10:20.

Q. (Mr. Lezinsky)—Is it not a fact that you know that all tickets of that character have to be stamped and signed by the agent? A. It is.

Q. All tickets of that character?

A. All tickets of that character. I mean tickets of that particular class must all be signed and stamped.

Q. (The Court)—You mean round-trip tickets?

A. Yes, sir.

Q. (Mr. Lezinsky)—You mean a paper ticket of that kind?

The Court—That is misleading. The witness answered to a question that I put to him that it is only a certain kind of ticket that required a signature.

The Witness—Every ticket of that particular form—a ticket just as that is printed; like that, and of the same form sold for the same price, requiring the stamping, but it is of very little concern to me. I pay no attention to them any more than to know that they have got that kind of a ticket. A person might present that kind of a ticket to me and it might have run out, but it would not make any difference to me.

Q. (Mr. Lezinsky)—Suppose a man had a ticket that had run out, would you sell him a Pullman ticket if you knew it?

A. Not if I knew it, but I never pay any attention to them. I never look at them. If you called my attention to the fact that the ticket had run out and was valueless, I would not; otherwise I would.

Q. (The Court)—You mean tickets of the same character?

A. In fact tickets exactly as that one is?

Q. What do you mean by tickets exactly?

A. Printed on white paper with yellow front, and having the same conditions.

Q. Do you mean all tickets that can be folded?

A. No, sir; all tickets that are printed as that one is, or the sample that the Court has.

Q. (Mr. Lezinsky)—Do you know of any ticket which is a yellow ticket like that, that does not require it to be stamped and signed by the agent for return passage? A. I do not.

The Court. That question is confusing. I do not know what the witness means by the answer. You may know, but I do not. The jury may know, but I do not know what he means by that answer, and he will have to explain himself.

Q. (Mr. Lezinsky)—Will you explain whether or not there are any tickets which has the appearance that the ticket now has in my hands—

A. Oh, yes, there are lots of them.

Q. —which do not require to be stamped and signed by the agent, for return passage?

A. There may be lots of tickets which has the same appearance that that ticket has on an ordinary glance. There are various kinds of tickets. A ticket folded up like that is a very unsatisfactory ticket. You could not tell whether it was yellow or red the way you have got it folded.

Q. Mr. Pauson's sleeper ticket read from Seattle to Portland? A. Yes, sir.

Q. You were issuing him that kind of a sleeper?

A. Yes, sir.

Q. Therefore you were expecting from him a ticket which was for passage from Seattle to Portland?

A. Yes, sir.

Q. Is not that a fact? A. That is the fact.

Q. If a ticket as I have it here, or folded in any way like that, were exhibited to you as a ticket for passage from Seattle to Portland, would it not of necessity have to be a return ticket from Seattle to Portland?

A. Not necessarily, no, sir. It might be from Seattle to New York, by way of San Francisco or Portland.

Q. Do not all these tickets have to be signed by the passenger, all of these particular tickets?

A. Yes, sir.

The Court—Do you mean of that identical kind, or a ticket that can be folded?

Mr. Lezinsky—I mean all of these long form tickets.

Q. Are they not required to be signed by the passenger?

A. No. I sell a ticket from here to New York or Seattle to New York City, that goes over 15 roads, that does not require signature only on the front of the ticket; use it right from there to New York without any other signature.

Q. That is a single ticket?

A. A single trip ticket, and is on the same kind of paper, and which is about the same size paper.

Q. If it is a return trip ticket, it has to be signed?

A. At destination before starting back to return, it has to be.

Defendant rests. This closed the testimony in the case.

(Admonition to the jury and the further hearing of the case continued until Tuesday, Dec. 18, 1894, at 11 A. M.)

Tuesday, Dec. 18, 1894, 11 A. M.

(The jury were here excused for half an hour.)

The defendant at this point renewed its motion heretofore made at the close of plaintiff's case, for an instruction to find for the defendant which was denied, and to which ruling the defendant duly excepted.

Mr. Redding—May it please the Court I have had my copyist make a copy from these rules of the extracts thereof which we desire to introduce, and I believe Mr. Beazley has the typewritten copy I gave him with the rules themselves as printed. Your Honor suggested the other day that it would be better to put in those portions of the rules which I have

marked, than the entire rules, so as not to encumber the record. That I have done.

The Court—As to the instructions in this case, it seems to me, looking at Judge Beatty's instructions, that he took a little different view of the law than what I do. It seems to me (adhering to the views I expressed the other day, and I have had no chance to review them, and hence I adhere to them, for the purpose of instructing the jury) that the whole controversy and question of damages turn on what took place between the agent and Mr. Pauson. If Mr. Pauson's story be true, he was a legal passenger; if the agent's story be true, he was not a legal passenger. Of course, if he was not a legal passenger, well, the balance of the instructions is very simple; it should be a finding for the defendant.

ARGUMENT ON INSTRUCTIONS TO JURY.

(The jury were called in and the case argued by Mr. Lezinsky and Mr. Redding.)

Charge to the Jury.

The Court—Gentlemen of the jury, the controversy between the parties to this action turns upon the rights under the ticket purchased by plaintiff of defendant. It is called a limited ticket, because it is limited in the time it may be used, and it is sold for a less price than the regular fare, and subject to certain conditions. One of these conditions is, that it will not be good for a return trip unless it be signed by the holder in the presence of the agent of the company, and witnessed by such agent, and stamped by him. It contains a notice to the passenger that it will

not be good unless so signed, witnessed and stamped, and this notice is substantially a part of the terms of the ticket. Therefore, it was the duty of the plaintiff to present the ticket to an agent for signing and witnessing and stamping. When so presented and signed it was the duty of the agent to witness and stamp it. There is a controversy between the plaintiff and defendant as to what was done, which you are to decide from the testimony, and if you find from the testimony and evidence, that the plaintiff did present himself to an agent and sign the ticket in his (the agent's) presence, and the agent took the ticket and returned it in such a way and under such circumstances as to justify plaintiff in believing that he, the agent, had witnessed and stamped the ticket, and plaintiff so believing, entered the train he was a legal passenger; and if you find from the evidence further, that he explained to the conductor the circumstances he had a right to refuse to pay or deposit a fare with the conductor, and his removal from the train, if you find from the evidence he was removed, was unlawful. If, on the other hand, you find that such is not the case, plaintiff was not a legal passenger, and also find that he refused to pay his fare, which it is admitted that he did, it was the conductor's right and duty to put him off the train. If you find that plaintiff was not legally a passenger in accordance with these instructions, you will find for the defendant. That, of course, necessarily will end the case, and you do not have to direct your attention to any damages; that is, if you find from the evidence that the plaintiff was not a legal passenger, as I have instructed you, you

will find for the defendant. If, on the other hand, you find that he was a legal passenger, and also find he was put off the train, you will then consider the amount of damages he suffered.

He does not complain of any physical injury having been inflicted upon him. Indeed, counsel in his argument of the case to you, admitted that no physical injury was inflicted upon the plaintiff. That leaves as elements for your consideration to determine from the evidence, if plaintiff suffered mental pain or worry, or was subjected to humiliation or discomfort, and you would have a right to consider in this connection, his station in life, and further in forming a judgment, you can consider, if you find it to be true from the evidence, that the conductor offered to accept his fare to be refunded at Tacoma, on an adjustment of the dispute about the ticket, and you should also consider the conduct of the conductor, whatever you find from the evidence it to be, the acts of the plaintiff himself, and his acts and conversations, if any, on his return to the sleeper, or at Tacoma.

If the evidence does not establish these elements of damage, or any of them, and you find for the plaintiff on the other issues, his damage will be the price of his fare from Tacoma, and from thence to Portland, a total I believe, of \$6.35. Is that correct?

Mr. Redding—Yes, sir.

The Court—If, on the other hand, the evidence does establish these elements or any of them, you will estimate the amount and add to it the amount of such fare.

The burden of proof is on the plaintiff in the action to establish his cause of action, and to apply that prin-

ciple directly to the issues that I have submitted to you, it devolves upon the plaintiff to prove by a preponderance of testimony, that he did present the ticket to the agent to be witnessed and stamped, and it also devolves upon him to prove that he was put off the train, and he must also prove the damage that he suffered—that he suffered damage in accordance with the instructions that I have given you.

There is one fact upon which the burden of proof is upon the defendant, and that is the fact as to the offer on the part of the conductor to accept his fare—the payment of it or a deposit of it, and that he would make a refund of it upon an adjustment of the dispute about it at Tacoma.

You are not bound to find a verdict on the side on which the greatest number of witnesses are, if less number convinces your mind. Of course, all other circumstances being equal, two witnesses are better than one.

The fact that the defendant is a corporation, of course you should not consider. If corporations do not perform their duties in other relations in life, such as paying taxes and things of that sort, there is a proper place to adjust those matters. They cannot be adjusted in a case like this in a court of justice. You, therefore, gentlemen of the jury, should consider this case just as free from prejudice, as you would consider it if it were between two individuals.

If here is to be a verdict against the defendant in this case, it should be upon the evidence and the law in this case, and hence you should consider it fairly, dispassionately, and do justice accordingly.

I have prepared two forms of verdict to suit the exigencies of the case, and if you find for the plaintiff in the suit, the form of your verdict will be, "We, the jury, find in favor of the plaintiff, and assess the damages at the sum of (blank) dollars." If you find for the defendant, the form of your verdict will be, "We, the jury, find in favor of the defendant." Of course, it is to be signed by your foreman. When you retire to the juryroom you will select one of your number as foreman, and when you have agreed upon a verdict, you will select one of these forms to express it on, and have your foreman sign it, and then come into court.

Are there any exceptions?

Mr. Lezinsky—We are entirely satisfied with the charge of the Court.

Mr. Redding—May it please the Court, the defendant would like to except to that portion of the charge to the Jury in reference to the right of a conductor to accept oral statements of the fact. I do not know how to specifically except to any particular paragraph of the instructions, unless I have them before me.

The Court. (To Mr. Lezinsky)—There is no objection to his taking these exceptions after the Jury had gone out, and indicating those words he objects to.

Mr. Lezinsky—No. Whatever paragraph is covered by that exception, we make no objection to his pointing that out.

The Court—Point that out.

Mr. Redding—That should also include the paragraph read by your Honor before that, in reference to the passenger being a legal passenger. It is that entire matter that I want to enter a formal exception to.

The Court—Gentlemen of the Jury, you may now retire.

(Here the Jury retired.)

Mr. Redding—If the Court please, the refusal to give certain instructions presented by the defendant, I would like to enter the—I understand the request for those is denied in such way. Would your Honor state it so that I can take an exception to the refusal to give certain instructions.

The Court—They are denied because they are presented in such form that they necessarily make the charge too long. In other words they are not manageable.

Mr. Redding—I requested an instruction No. 12 to be given, I think a portion of it was given by the Court, but the balance of it was refused. I should like to enter an exception to the order of the court refusing that instruction of the defendant numbered 12.

The Court—There is no instruction No. 12. They are all handed in.

Mr. Redding—It is an additional piece of paper to that marked 12.

The Court—Oh, yes, instruction marked 12. That presents the point I think that you wish to except to especially.

Mr. Redding—That exception is allowed, do I understand the Court?

The Court—Yes, sir, that exception is allowed. You also except to this part of it: “Therefore, it was the duty of the plaintiff to present the ticket to an agent for signing, and witnessing and stamping. When so presented and signed, it was the duty of

“ the agent to witness and stamp it. There is a con-
“ troversy between the plaintiff and defendant as to
“ what was done, which you are to decide from the
“ testimony, and if you find from the testimony and
“ evidence that the plaintiff did present himself to an
“ agent, and signed the ticket in his (the agent’s)
“ presence, and the agent took the ticket and returned
“ it in such a way and under such circumstances as to
“ justify the plaintiff in believing that he, the agent,
“ had witnessed and stamped the ticket, and plaintiff
“ so believing, entered the train, he was a legal pas-
“ senger; and if you find from the evidence further,
“ that he explained to the conductor the circum-
“ stances, he had a right to refuse to pay or deposit a
“ fare with the conductor, and his removal from the
“ train, if you find from the evidence that he was
“ removed, was unlawful.” That you except to.

Mr. Redding—I would like to except to all of that instruction.

The Jury after deliberation returned a verdict for plaintiff in the sum of \$310.

The foregoing bill of exceptions is correct in all respects and is hereby approved, allowed and settled, and made a part of the record herein.

JOSEPH McKENNA,
Circuit Judge.

[Endorsed]: Filed Dec. 28th, 1894. W. J. Costigan,
Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
Northern District of California.*

FRANK PAUSON,

Plaintiff,

vs.

NORTHERN PACIFIC RAILROAD COM-
PANY,

Defendant.

No. 11,807.

Affidavit of Service of Bill of Exceptions.

CITY AND COUNTY OF SAN FRANCISCO, }
State of California. } ss.

Louis Thom, being duly sworn deposes and says: that he is a clerk in the office of Joseph D. Redding, No. 35, Chronicle Building, San Francisco, that he is over the age of eighteen years, and at the request of Mr. Redding served a copy of the defendant's bill of exceptions in the above-entitled action upon George Lezinsky, the attorney for the plaintiff, by leaving a copy of said bill of exceptions personally at the office of said Lezinsky, No. 206 Sansome street, at 11 o'clock A. M., on December 18th, 1894, and with the clerk of said Lezinsky, he the latter, being absent from his office at the time.

LOUIS THOM.

Subscribed and sworn to before me this 28th day of December, 1894.

W. J. COSTIGAN,
Commissioner U. S. Circuit Court, Northern
District of California.

[Endorsed]: Filed Dec. 28, '94. W. J. Costigan,
Clerk.

In the Circuit Court of the United States for the Ninth Circuit, Northern District of California.

FRANK PAUSON,

Plaintiff,

vs.

NORTHERN PACIFIC RAILROAD COM-
PANY,

Defendant.

Petition for Writ of Error and Assignment of Errors.

To the Honorable, the Judges of the Circuit Court of the United States, for the Ninth Judicial Circuit, Northern District of California: Comes now the defendant above named, and considering itself aggrieved by the decision and judgment of this Court herein, made and entered on the 18th day of December, 1894, attaches hereto, and makes a part hereof, its Assignment of Errors, and prays for a writ of error from said judgment to the United States Circuit Court of Appeals for the Ninth Circuit, and that said writ and citation thereon may be issued herein, and a transcript of the record and proceedings upon which said judgment was rendered, duly authenticated, be sent to the said Court of Appeals.

Assignment of Errors.

I.

The Court erred at the trial of this cause, in admitting the railroad ticket introduced by the plaintiff. The full substance of the evidence admitted is as follows:

“Mr. Lezinsky—Mr. Pauson, I would ask you if these two pieces of paper that I hand you were the pieces of paper that you handed to the agent at Seattle, and to the conductor on the railroad train?

A. Yes, sir.

Q. Were they together at that time?

A. They were.

Q. They were together then? A. Yes, sir.

Mr. Lezinsky—We offer them in evidence, if your Honor please.

The Court (To Mr. Redding)—The other objections that you made, I will overrule for the time being; it is a question of law that goes to the whole case.

(The ticket was introduced by plaintiff just prior to the testimony herein quoted, and was objected to by the defendant as being incompetent, immaterial and irrelevant.)

Mr. Redding—I reiterate at this time, for that purpose, that the ticket shows on its face that it is not stamped or witnessed, and I also renew my objection that the ticket, as now offered, shows it is in a mutilated form and was not the ticket that was presented at that time, and that the ticket as now produced has been forced into the case at our instance and not as the original ticket offered.

The Court—I do not think it is any objection—the objection is overruled.

Mr. Redding—I note an exception. (It is marked ‘Plaintiff’s Exhibit A’).”

The introduction of this evidence and ticket being duly objected to by the defendant, the objections being overruled and the defendant duly noting an exception.

Now, therefore, the defendant and plaintiff in error herewith assigns the same as error.

II.

The Court erred at the trial of this cause, in admitting testimony of J. Redelsheimer, a witness called for the plaintiff, as to the transactions which took place at the window of the office of the Northern Pacific Railroad Company at Seattle, the full substance of such evidence being as follows:

“Q. (By Mr. Lezinsky)—Did you there observe any transaction that took place between Mr. Pauson and the ticket agent of the Northern Pacific Railroad Company at the ticket station at Seattle?

Mr. Redding—If the Court please, we object to that as being immaterial, irrelevant and incompetent. This is an action of *tort*.

The Court—It has already been testified to by the other witness, and I think it would be the quickest way to let it in, and argue about the legality of it afterwards. (Argument question read.)

Mr. Redding—I will simply enter my objection at this time.

The Court—The objection is overruled on the ground that the question was answered without objection before by the other witness.

Mr. Redding—Exception.”

Now, therefore, the defendant and plaintiff in error herewith assigns the same as error.

III.

The Court erred at the trial of this cause, in allowing the deposition of Mr. Abraham Stern to be intro-

duced and read before the jury. The defendant objected to the reading of this deposition as being incompetent, for the reason that the deposition was taken on behalf of a former trial of this case, and had been read to the jury upon a former trial, and, therefore, that it would not be competent to read it at the second trial any more than it would be to read the testimony of one of the witnesses, taken at the former trial by the shorthand reporter. The Court overruled this objection and allowed the deposition to be read, to which ruling of the Court the defendant duly noted an exception and now assigns the same as error.

IV.

The Court erred at the trial of this cause, in refusing to instruct the jury at the close of the testimony of the plaintiff, to render a verdict for the defendant; at the close of the plaintiff's case, the defendant moved the Court upon the trial of this cause to instruct the jury, that upon the evidence offered by the plaintiff, it was their duty as a matter of law to find a verdict for the defendant. The defendant, upon said motion, referred to the entire testimony offered by the plaintiff, and the full substance thereof, and the defendant based its motion upon the following grounds:

(a.) That in this action the plaintiff sued the defendant in *tort*, alleging that, on the 6th day of September, 1892, while he was a passenger upon the defendant's train running between Portland and Seattle, the defendant wrongfully, maliciously, wantonly and wilfully assaulted, insulted and maltreated him, and by force of arms, ejected him from the train, causing

the plaintiff to suffer both physical and mental injuries in the sum of ten thousand dollars damages. That all the evidence of the plaintiff's case showed that all of the servants, agents and employees of the defendant had caused the plaintiff no bodily harm of any kind. On the contrary, that, according to the plaintiff's own testimony, the treatment given him could not have been milder.

(b.) That the evidence of the plaintiff's case and all thereof, showed that when he presented his ticket to the conductor of the train between Seattle and Tacoma, the ticket offered was a limited first-class ticket, having special provisions and conditions thereon, among which were the conditions and provisions that the ticket should be signed by the person claiming to own the same, and witnessed and stamped at Seattle by an agent of the defendant; that the ticket as presented to the conductor, was not witnessed and was not stamped, but was irregular and incomplete on its face, that the conductor was not authorized to accept the statement of the plaintiff showing why this ticket was defective, but it was his, (the conductor's) duty to demand fare of the plaintiff, and, if refused, to put the plaintiff off at the nearest regular station.

(c.) That the evidence of the plaintiff's case and all thereof showed that the plaintiff offered to pay his fare to Tacoma, to the conductor, and did pay his fare to the conductor, from Kent to Tacoma, and accepted the proposition made by the conductor to him on that behalf, and accepted the offer made by the conductor to adjust the matter and correct the ticket before the agent at Tacoma.

(d.) That the evidence of the plaintiff's case and all thereof showed that by the acts of the plaintiff, paying his fare between Kent and Tacoma and accepting the proposition made by the conductor, he (the plaintiff) was enabled to proceed upon his journey without any delay or inconvenience, and did reach his destination on time and without any bodily or mental injury or loss of time or money or detriment to business.

(e.) That the ticket introduced by the plaintiff, upon which he claimed to be a passenger upon the train of the defendant, was a defective ticket, and not such a ticket as could be accepted by the conductor, or such a ticket upon which the plaintiff was entitled to ride, and that the conductor was justified in putting the plaintiff off the train if he did not pay his fare.

(f.) That in this form of action, based upon *tort*, in the alleged willful ejection of the plaintiff by the agents and servants of the defendant, it was not competent evidence for the conductor to receive the oral statements of the plaintiff why the ticket was defective, but he (the conductor) was confined to the condition of the ticket itself; that the allegations in the plaintiff's complaint and his cause of action, as therein set forth, confined him to the transactions and occurrences which took place from the time of his presenting his ticket to the conductor of the defendant and thereafter, and could not be strengthened by any testimony with reference to events prior thereto.

To which refusal of the Court to give the above instructions to the jury, and upon the grounds herein

specified, the defendant duly excepted and now assigns as error.

V.

The Court erred at the trial of this cause, and at the close of the entire evidence in this case, in refusing to instruct the jury to render a verdict for the defendant upon the request of the defendant made at that time. The defendant, at the close of the testimony of the entire case, again requested the Court to instruct the jury to render a verdict for the defendant, renewing its motion made at the close of the plaintiff's case, and upon the same grounds which the defendant herein sets forth and specifies by direct reference, and asks to be made a part of these specifications of error, which refusal of the Court the defendant duly excepted to, and now assigns the same and all thereof as error.

VI.

The Court erred at the trial of this cause in refusing to give to the jury, at the close of the testimony, a portion of Instruction No. 12 requested by defendant, as follows, to-wit:

("Instruction No. 12," requested by the defendant.)

This an action based on the alleged willful misconduct of a particular servant of the defendant, namely: the conductor. It is not based on the negligence of the agent of the defendant at Seattle.

I furthermore instruct you that this being a special ticket at a reduced rate, with particular instructions and regulations attached to it, it became the duty of the plaintiff in purchasing it to exercise unusual care in seeing that all of the conditions of it were fulfilled.

It is admitted that the ticket itself which was exhibited by the plaintiff to the conductor was not in proper form for the conductor to receive it as fare. All of its conditions had not been complied with. That the conductor of the defendant's train, upon the plaintiff's presenting this ticket bearing no stamp of the agent at Seattle, and the signature of the plaintiff not being witnessed, had no authority to waive any condition of the contract to dispense with the want of such a stamp, and such witness of signature or to inquire into the previous circumstances or permit the plaintiff to travel on the train. It would be inconsistent alike with the express terms of the contract of the parties and with the proper performance of the duties of the conductor in examining the tickets of other passengers, and in conducting his train with due regard to speed and safety, that he should undertake to determine from oral statements of the plaintiff or other evidence, the facts alleged to have taken place before the beginning of the return trip, and as to which the contract on the face of the ticket made the stamp of the agent at Seattle and the witnessing of the plaintiff's signature at Seattle the only and conclusive proof," for the reason that the testimony in the case supported the facts as claimed to exist by the said instruction and the refusal to give the same was, therefore, error. The refusal to give said instruction was duly excepted to and the exception allowed by the Court, and the said refusal and all thereof is now assigned as error.

VII.

The Court erred at the trial of this cause in giving the following instruction to the jury, and each and every part of the same:

“Therefore, it was the duty of the plaintiff to present the ticket to the agent for signing and witnessing and stamping. When it was presented and signed, it was the duty of the agent to witness and stamp it. There is a controversy between the plaintiff and defendant as to what was done, which you are to decide from the testimony, and if you find from the testimony and evidence that the plaintiff did present himself to an agent and sign the ticket in his (the agent’s) presence, and the agent took the ticket and returned it in such a way and under such circumstances as to justify plaintiff in believing that he, the agent, had witnessed and stamped the ticket, and plaintiff so believing entered the train, he was a legal passenger; and if you find from the evidence further, that he explained to the conductor the circumstances, he had the right to refuse to pay or deposit fare with the conductor and his removal from the train, if you find from the evidence he was removed, was unlawful,” for the reason that it instructed the jury that the conductor should receive the testimony of plaintiff, showing the defective condition of his ticket, and should be guided by such testimony and oral statements. This being an action in *tort*, based on the acts of the defendant’s employees, on the train, and not an action on the contract for the acts or omissions of the agent of the defendant, at Seattle, said instruction is erroneous and exception to the same was duly

taken by the defendant, and allowed, and the same and all thereof, is now assigned as error.

JOSEPH D. REDDING,

Attorney for Defendant and Plaintiff in Error.

Order Allowing Writ of Error.

Order. The foregoing petition having been presented with the assignment of errors, and it appearing that the petitioner is entitled thereto, it is ordered that the writ of error be and it is hereby allowed as prayed.

JOSEPH McKENNA,

Judge.

[Endorsed]: Filed January 21st, 1895. W. J. Costigan, Clerk. By W. B. Beazley, Deputy Clerk.

In the Circuit Court of the United States, for the Ninth Circuit, Northern District of California.

FRANK PAUSON,

Plaintiff,

vs.

NORTHERN PACIFIC RAILROAD COMPANY,

Defendant.

No. 11,807.

Bond on Writ of Error.

Know All Men by These Presents: That we, the Northern Pacific Railroad Company, principal, and T. K. Stateler and E. H. Forester, as sureties, are held and firmly bound unto Frank Pauson in full and just sum of seven hundred dollars, lawful money of the

United States, for the payment of which well and truly to be made, we and each of us hereby bind ourselves, our heirs, executors, administrators and assigns, jointly and severally by these presents.

Sealed with our hands and dated this 21st day of January, 1895.

The condition of the foregoing obligation is such that,

Whereas, in the above-entitled court, in an action pending therein between Frank Pauson, plaintiff, and the Northern Pacific Railroad Company (a corporation) defendant, judgment was, on the 16th day of November, 1894, rendered in favor of said plaintiff against said defendant, for the sum of three hundred and ten dollars damages, and for ——— dollars, costs of suit, and

Whereas, said Northern Pacific Railroad Company has obtained from said court a writ of error to reverse the said judgment in said action, and citation to said plaintiff, citing and admonishing him to appear in the said court, to be held at San Francisco, in the State of California, on the — day of — next, has been issued;

Now, therefore, if said defendant, the Northern Pacific Railroad Company, plaintiff in error, shall prosecute its said writ of error to effect and shall answer all costs and damages, this indemnity being for the whole amount of the judgment including just damages for delay and costs and interest on the appeal, if they shall fail to make their plea, then the above

obligation shall be null and void; otherwise, it shall be and remain in full force and effect.

NORTHERN PACIFIC RAILROAD COMPANY,
By Joseph D. Redding, its Counsel duly
authorized.

E. H. FORESTER.
T. K. STATELER.

STATE OF CALIFORNIA, }
City and County of San Francisco. }

T. K. Stateler and E. H. Forester, being first sworn, deposes each for himself as follows: I am the person whose name is subscribed to the foregoing instrument as a surety thereon. I state that I reside in the Northern District of the State of California, that I am a householder therein, and that I am worth the amount mentioned as the penalty in said bond over and above all my just debts and liabilities and property which is not exempt from execution.

E. H. FORESTER.
T. K. STATELER.

Subscribed and sworn to before me this 21st day of January, A. D. 1895.

(Seal.) E. P. COVELL.

Notary Public in and for the City and County
of San Francisco, State of California.

Approved. Execution stayed, writ of error being allowed.

JOSEPH MCKENNA,
Circuit Judge.

[Endorsed]: Filed January 21st, 1895. W. J. Costigan, Clerk. By W. B. Beazley, Deputy Clerk.

*In the Circuit Court of the United States, Ninth Judicial
Circuit, Northern District of California.*

FRANK PAUSON,

Plaintiff,

vs.

NORTHERN PACIFIC RAILROAD COM-

PANY,

Defendant.

No. 11,807.

Certificate to Transcript.

I, W. J. Costigan, Clerk of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, do hereby certify the foregoing one hundred and fifty-nine written pages, numbered from 1 to 159, inclusive, to be a full, true and correct copy of the record, papers and proceedings in the above and therein entitled cause, as the same remain of record and on file in the office of the Clerk of said court, and that the same constitute the return to the annexed Writ of Error.

I further certify, that the cost of the foregoing transcript of record is the sum of \$96.40, and that said sum of \$96.40 was paid by Joseph D. Redding, Esq., attorney for the defendant, Northern Pacific Railroad Company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Circuit Court, this 19th day of February, A. D. 1895.

(SEAL.)

W. J. COSTIGAN,

Clerk U. S. Circuit Court, Northern
District of California.

Writ of Error.

UNITED STATES OF AMERICA—SS:

The President of the United States, to the Honorable, the Judge of the Circuit Court of the United States, for the Northern District of California, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court, before you, or some of you, between Frank Pauson and Northern Pacific Railroad Company, in which Northern Pacific Railroad Company is plaintiff in error, and Frank Pauson is defendant in error, a manifest error hath happened, to the great damage of the said Northern Pacific Railroad Company, plaintiff in error, as by its complaint appears.

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the city of San Francisco, in the State of California, on the 20th day of February next, in the said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to

the laws and customs of the United States, should be done.

Witness, the Honorable MELVILLE W. FULLER,
Chief Justice of the Supreme Court of the
(Seal.) United States, the 21st day of January, in
the year of our Lord one thousand eight
hundred and ninety-five.

W. J. COSTIGAN,
Clerk of the United States Circuit Court of
Appeals for the Ninth Circuit.

By W. B. Beaizley, Deputy Clerk.

Allowed by

JOSEPH MCKENNA,
Circuit Judge.

[Endorsed]: State of California, City and County
of San Francisco, ss. Lewis Thom, being duly
sworn, deposes and says: that he is a clerk in
the office of Joseph D. Redding, and is over the age
of eighteen years; that he served a copy of the
within Writ of Error upon George Lezinsky, the
attorney for the plaintiff and defendant in error,
by handing a copy of this writ of error personally to
said Lezinsky at his office in San Francisco, on Jan-
uary 22d, 1895. Lewis F. Thom. Subscribed and
sworn to before me this 22d day of January, 1895.
Henry McGill, Notary Public in and for the City
and County of San Francisco, State of California.
Original Writ of Error. Filed Jan. 22, 1895. W. J.
Costigan, Clerk U. S. Circuit Court, Northern Dist.
Cal. By W. B. Beaizley, Deputy Clerk.

Return to Writ of Error.

The answer of the Judges of the Circuit Court of the United States of the Ninth Judicial Circuit, in and for the Northern District of California:

The record and all proceedings of the plaint whereof mention is within made, with all things touching the same, we certify under the seal of our said court, to the United States Circuit Court of Appeals for the Ninth Circuit, within mentioned, at the day and place within contained, in a certain schedule to this writ annexed as within we are commanded.

By the Court,
(Seal.)

W. J. COSTIGAN,
Clerk.

Citation.

UNITED STATES OF AMERICA—SS:

The President of the United States, to Frank Pauson, greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, on the 20th day of February next, pursuant to a writ of error filed in the Clerk's office of the Circuit Court of the United States, for the Northern District of California, wherein Northern Pacific Railroad Company is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable JOSEPH McKENNA, United States Circuit Judge for the Ninth Judicial Circuit, this 21st day of January, A. D. 1895.

JOSEPH McKENNA,
U. S. Circuit Judge, Ninth Judicial Circuit.

[Endorsed]: State of California, City and County of San Francisco, ss. Lewis Thom, being duly sworn, deposes and says, that he is a clerk in the office of Joseph D. Redding, and is over the age of eighteen years; that he served a copy of the within Citation upon George Lezinsky, the attorney for the plaintiff and defendant in error, by handing a copy of this citation personally to said Lezinsky, at his office in San Francisco, on January 22nd, 1895. Lewis F. Thom. Subscribed and sworn to before me, this 22nd day of January, 1895. Henry M. McGill, Notary Public in and for the City and County of San Francisco, State of California. Original Citation. Filed Jan. 22, 1895. W. J. Costigan, Clerk U. S. Circuit Court, Northern Dist., Cal. By W. B. Beaizley, Dep. Clerk.

[Endorsed]: No. 224. U. S. Circuit Court of Appeals, Ninth Circuit. Northern Pacific Railroad Company, Plaintiff in Error vs. Frank Pauson, Defendant in Error. Transcript on Appeal. From the United States Circuit Court, Northern District of California. Filed February 18th, 1895.

F. D. MONCKTON,
Clerk.